Q. Were they doing anything other than playing cards?

A. Yes.

Q. What else were they doing?

A. Selling crack.

Q. All right. Now, how do you know they were selling crack?

A. Because you can see the sack and all that crack and all the cocaine, powder and all that.

Q. You know what crack looks like?

A. Yes.

Q. What's it look like?

A. Yellow little chipped piece of - - almost look like a rock.

Q. And when the crack is sold, is it put in some kind of a bag?

A. Yes.

Q. What's that look like?

A. It's a little see-through bag with red across the top.

Q. A little plastic bag?

A. Right.

Q. I am going to show you a bag that I'm taking out of State's Exhibit No. 88. Do you see that little bag there?

A. Yes.

Q. Is that the kind of bag that crack goes in?

A. Yes.

Q. All right. So how much of this crack did you see over there at Bam's house?

A. A whole bag full.

Q. A bag full of it?

A. Yes.

Q. Did you see people coming to and from the house to buy this crack?

A. Yes.

Q. And you say your Uncle Bam was selling it, too, huh?

A. Yes.

Q. What about these other two men, what were they doing?

A. One - - one, the fat chubby one, was laying down asleep, and while the other one and Bam were - - one was making - - making it and the other was giving it.

Q. Giving it out to people?

A. Right.

Q. They paid money for it, didn't they?

A. They made it.

Q. Did you see any money when these people came to buy the crack?

A. Yes.

Q. What happened to the money?

A. Bam took it and gave them the crack and stuff.

Q. This fat chubby fellow that was with Bam, do you know him?

A. Bam told me his name.

Q. What was his name?

A. A.J.

Q. A.J. Had you ever seen him before?

A. No.

Q. That was the first time you saw him?

A. Yes.

Q. All right. Now, you told me that you first saw these fellows when you came over to the house right after school, is that right?

A. Right.

Q. Did at any time either one of those fellows that was with Bam, did they leave the house?

A. No.

Q. They were there until after you left, huh?

A. They left before I - - before I left.

Q. Okay, that's what I mean. You saw these two fellows leave that were selling drugs with Bam?

A. Yes.

Q. Do you know where they went?

A. No.

Q. Now, did you see anybody else at Bam's house other than these two fellows, A.J. and the other guy and Gwen and Bam?

A. No.

Q. What did you do after you came back that second time and you stayed at Bam's house for the rest of the evening, what were you doing there?

A. We went - - me, my brother and Rodney went into the playroom.

Q. The play room?

A. Right.

Q. Where were these men selling drugs from?

A. The living room.

Q. The living room of the house. Did you go in there and

actually see these men?

A. Yes.

Q. Did you get a good look at them?

A. No.

Q. No. How do you know that this was A.J.?

A. Because the guy that had natural hair went over to wake him up, he was calling him his name.

Q. He kept calling his name?

A. Yes.

Q. You said Bam called him A.J., too?

A. When he left.

Q. So two people were calling this chubby man A.J.?

A. Yes.

Q. Now, this guy with the natural hairdo, he is the other man that you are talking about that was selling drugs with Bam and A.J.?

A. Yes.

Q. Had you ever seen him before?

A. No.

Q. Do you know his name?

A. No.

Q. Did you go home that night from your Uncle Bam's house?

A. Yes.

Q. How did you get home, do you remember; walking or getting a ride?

A. Walking.

Q. Who walked with you?

A. Bam and my bother and that's it.

Q. And what happened then once you got home?

A. My brother did his homework. He was about to go in there to watch TV but he got in the bed, and I was already in it.

Q. You were already in bed?

A. Right.

Q. Did you go straight to bed when you got home?

A. Yes.

Q. Did you see anybody over at your house?

A. Yes.

Q. Who was over there?

A. My mom, Don and a guy with black.

Q. With what?

A. With black, a black suit on.

Q. Okay. Had you ever seen him before?

A. No.

Q. What were they doing over at the house?

A. Playing cards and smoking cigarettes.

Q. Smoking cigarettes?

A. Yes.

Q. Are you sure they weren't smoking cocaine?

A. Yes, I'm sure.

Q. And it was just the three of them there then?

A. Yes.

Q. Now, did you go to sleep?

A. Yes.

Q. And did you later wake up?

A. Yes.

Q. When you woke up, what caused you to wake up?

A. My brother.

Q. What did your brother do that made you wake up?

A. Pushed me out of the bed.

Q. He pushed out of the bed?

A. Yes.

Q. What for?

A. Because he - - somebody made a - - the door made a loud slam and he woke up and pushed me out of the bed to wake me up.

Q. And what happened then after your brother woke you up?

A. I got back in the bed and laid down because I seen a guy go into the bathroom and then he came out and all I heard is someone fall to the ground.

Q. Now, this guy that went in the bathroom, had you ever seen him before?

A. No, I don't think.

Q. You say you heard somebody fall down?

A. Yes.

Q. Were you able to see who that was?

A. No.

Q. Did you hear anything else, other than this person falling down?

A. No.

Q. What did you do then, after this - - you heard this person fall down?

A. Stayed still.

Q. How come?

A. Because - - because if I would have got up to look, I was afraid they might come in there and do something to me.

Q. You were afraid that who was going to come in?

A. All of them, all three of them.

Q. Well, did you see somebody other than the man that you saw go in the bathroom?

A. No.

Q. Okay. Not yet, huh?

A. Right.

Q. He is the only one that you saw so far, is that right?

A. Yes.

Q. Did you later see some other men, other than the man that you saw go in the bathroom?

A. Yes.

Q. All right. These other two men, what did they look like?

A. One was fat, chubby, had on yellow and black gloves with a black jacket, and one I think had natural hair, had on a burgundy jacket and had on gloves and had on jeans.

Q. Now, these two men, Deonte, that you have just described, had you seen those men before?

A. Those two.

Q. Where did you see them before?

A. Bam's.

Q. When did you see them at Bam's?

A. When we came home - - when we came over there after school.

Q. The same night?

A. Yes.

Q. These are the two same men that you had just seen playing cards and dealing drugs at Bam's house?

A. Yes.

Q. Now, what did these three men do?

A. What do you mean?

Q. Did you see what they did after they came in your house?

A. No.

Q. What did you do?

A. After my brother pushed me out of the bed, I was about to go look to see who it was but my brother told me to get back into bed, so I did.

Q. And you told me you were scared, too, is that right?

A. Yes.

Q. You told me about the man that you saw going into the bathroom. Where did you see thee other two men, the fat chubby man and the man with the natural hairdo?

A. They were standing by the door.

Q. By what door?

A. The one by the bathroom.

Q. The one near the bathroom?

A. Yes.

Q. All right. I am going to show you a picture, actually it's a diagram of your house. This is State' s Exhibit No. 1, and this is the front door and the living room and the dining room and the kitchen and the two bedrooms. Do you see that?

A. Yes.

Q. Does that look like the house you used to live in at 4201 Prospect?

A. Yes.

Q. Show Judge Hanna where you and Raymond were sleeping.

what bedroom were you in?

A. (Indicating).

Q. And point to where you saw these two men, the fat chubby man and the man with the natural hairdo.

A. (Indicating).

Q. Right in that hallway there?

A. Yes.

Q. All right. What were they doing when you saw them there?

A. One was looking in this room and one was looking at me and Raymond.

Q. One was looking at you and Raymond.

A. Yes.

Q. Did he say anything to you?

A. Yes.

Q. What did he tell you?

A. When I was about to get back up, he told me to lay back down.

Q. Which one of the two men was that that talked to you, the fat chubby one or the one with the natural hairdo?

A. Natural hairdo.

Q. All right. What did the two men do after that?

A. The guy with the natural hairdo went in the kitchen and got a knife.

Q. Got a knife. Okay. At any time while you were in the bedroom, Deonte, did the men come into the bedroom, any of the three men?

A. Yes.

Q. What did they do when they came in?

A. One ripped out a cord from the fan and one went in there to get the knife.

Q. Do you remember which of the men that was?

A. To get the knife?

Q. Yes.

A. There was three guys, and I think the guy with the Afro went in to get the knife from the one with the natural curl, natural hair.

Q. One of the men had an Afro, is that right?

A. Right.

Q. Is that the man that you told me you first saw go into the bathroom?

A. Yes.

Q. Now, at some point, did any of these men tie up you and

your brother?

A. Yes.

Q. And how many of the men did that?

A. Two.

Q. Do you know which ones?

A. The one with the natural hair and the one with the Afro.

Q. Did you get a good look at them when they were tying you up?

A. Yes.

Q. Tell me, now, were the bedroom lights on?

A. No.

Q. Was there any light coming into your bedroom?

A. No.

Q. How were you able to get a good look at them?

A. Because they were almost up in my face.

Q. They were real close to you?

A. Yes.

Q. Did they do anything else to you, other than tie you up?

A. No. Later they did.

Q. Later what happened?

A. The guy with the natural hair went and took the knife and stabbed my mother and I started to cry and the guy with the - - the fat chubby one came and told me that everything would be all right and I was still crying so he hit me in the side of my head four times.

Q. The fat chubby guy hit you?

A. Yes.

Q. He is the guy that you earlier told me was named what?

A. A.J.

Q. A.J. You're sure it was him?

A. Yes.

Q. After this was all over, Deonte, did you talk to the police officers about what happened?

A. Yes.

Q. Do you remember whether or not you told them about A.J.?

A. Yeah, I told them.

Q. Did they show you some pictures?

A. Yes.

Q. When they showed you the pictures, what did they ask you to do.

A. See if that's any of them that was in the accident.

Q. All right. Handing you State's Exhibit No. 121, have you ever seen that picture before?

A. Yes.

Q. And who's that?

A. Looks like A.J. to me.

Q. Is that the only picture that you picked out when the police officer showed you pictures?

A. No.

Q. Did you pick somebody else out?

A. No, it was the same picture but he had his hair cut shorter.

Q. Okay. But you know that's A.J.?

A. Yes.

Q. And he's the one that you saw the night that your mom got stabbed?

A. Yes.

Q. Did you pick out pictures of any of the other two men?

A. No.

Q. And why not?

A. Because it didn't look like any of them.

MR. BERRIGAN: Those are all the questions that I have. Thank you, Deonte.

CROSS-EXAMINATION BY MR. HALL:

Q. Deonte, where was Uncle Bam living, what house was he living at, do you know; can you describe it for us?

A. He was living in a white house and it was the second one from the corner.

Q. It wasn't the corner house?

A. Right.

Q. Okay. And you went over to the second house from the corner that night?

A. Yes.

Q. And when you got over there, your mom wasn't there?

A. Right.

Q. And your mom never came there that night while you were there?

A. Right.

Q. What time did you leave Uncle Bam's house that night, do you know?

A. No.
Q. Had you watched any TV?

A. Yes.

Q. What did you watch on TV?

A. I watched the Adam's Family and - - I can't remember the other one.

Q. Was it dark when you left Uncle Bam' s house to go home?

A. Yes.

Q. And Uncle Bam walked you home?

A. Yes.

Q. When you got home, who was all there?

A. My mom, Don, and this guy in the black.

Q. Was there a woman there?

A. Yes.

Q. Had you seen her before?

A. No.

Q. Deonte, did you see the man cut your mother?

A. No.

Q. You didn't see that?

A. No.

Q. When the police officer showed you the pictures that day, do you remember down at the police department - -

A. Yes.

Q. - - didn't you just tell him that you had seen A.J. before?

A. Yes.

Q. Did you tell him that A.J. was one of the men who did this?

A. Yes.

Q. I show you this picture, it's marked as State's Exhibit No. 102. Do you recognize that man at all?

A. Sort of.

Q. How do you sort of recognize that man?

A. His curl.

Q. What is it about his curl?

A. It's short.

Q. Okay. How is it you kind of recognize that man?

A. Sort of like his face. That's about it.

Q. What is it about his face you recognize?

A. His eyebrows.

Q. Okay. How do you recognize his eyebrows?

A. They are sort of sticking up.

Q. The man in that picture, have you seen him anywhere

before?

A. No, I don't think.

Q. Why do you say he looks familiar to you?

A. I don't know.

Q. Does he look like any of the men that were over at your house that night?

A. A little.

Q. Which of the men does he look like, Deonte?

A. The short one with the natural hair, almost.

Q. The short one with the natural hair. Did you see him over at Uncle Bam's earlier that day?

A. Yes.

Q. You did?

A. Yes.

MR. HALL: No other questions.

REDIRECT EXAMINATION BY MR. BERRIGAN:

Q. Do you know the difference between jehri curl and natural hairdo?

A. Yes.

Q. Tell us what do they look like. What's a jehri curl look

like?

A. Jehri curl looks like little bits of string curled up. And a natural curly hair looks like - - just looks like regular hair but soft and curly.

Q. All right. You know the difference between a jehri curl and a natural hairdo, is that right?

A. Right.

Q. Do you get those mixed up at all?

A. Yes, sometimes.

Q. Sometimes. What about this guy? Mr. Hall showed you this picture, State's Exhibit 102. What kind of hairdo does that guy have?

THE COURT: What picture is that?

MR. BERRIGAN: 102, Judge.

A. A curl.

Q. (By Mr. Berrigan) That's a jehri curl, isn't it?

A. Yes.

Q. Now, you told me that this fellow that was at Bam's house, along with A.J., he had a natural hairdo, didn't he?

A. Yes.

Q. All right. Is that right?

A. Right.

Q. Does that guy have a natural hairdo?

A. No.

Q. The fellow that stabbed your mom, is that the same fellow that told you to shut up?

A. No.

Q. No. Did the fellow that you say stabbed your mom, did he say anything to you at all?

A. No.

Q. Is he one of the guys that tied you up?

A. Yes.

Q. Did you have a good chance to get a good look at him when he was tying you up?

A. Not that good.

Q. Isn't he one of the guys you told me was right next to your face?

A. Yes.

Q. But you didn't have a chance to get a good look at him?

A. No, not that one, but I got a good look at the other one.

Q. A.J.?

A. Right.

Q. You're pretty sure about A.J., aren't you?

A. Yes.

Q. You're not sure about the other two guys because you didn't get a good look at them?

A. Right.

Q. Okay. When Mr. Hall showed you that picture, you said something about - - and I'm talking about this same one here, you said something about that's not it. What did you mean by that?

A. His hair is sticking out and this is the way - - the way I seen it, his hair was not out that way (indicating).

Q. Deonte, you're sure that the fellow that you saw, the two fellows that you saw at Bam's, A.J. and this other guy, were the same people that you saw at your own house, is that right?

A. Right.

Q. And these are the fellows that were playing cards with your Uncle Bam?

A. Yes.

Q. Selling drugs with him?

A. Yes.

MR. BERRIGAN: I don't have any other questions. Thank you.

RECROSS-EXAMINATION BY MR. HALL:

Q. Deonte, did any of the men that were over at your house and did this thing over at your house that night, did any of them have a jehri curl?

A. Sort of.

Q. So one of them did have a jehri curl?

A. Probably, I don't know.

Q. You just don't know?

A. Yes.

MR. HALL: No other questions.

MR. BERRIGAN: I don't have any other questions.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT KANSAS CITY

STATE OF MISSOURI,	)	**CR87-1997**
	)	
Plaintiff,	)	
vs.	)	
	)	
ROGER BUCKNER,	)	**Sept. 15, 1988**
	)	
Defendant.	)	

THE DEPOSITION OF THE WITNESS DEONTA KINNEY

produced, sworn and examined, between the hours of 8:00 a.m. and 7:00 p.m. of September 15, 1988, at the Office of the Pubic Defender, 10th Floor Jackson County Courthouse, 415 E. 12th Street, Kansas City, Jackson County, Missouri, before

PHYLLIS M. MAIER, CSR
Registered Professional Reporter

a notary public in and for the State of Missouri, in the above-entitled cause; taken on behalf of the defendant.

APPEARANCES

For Plaintiff: Mr. Patrick B. Hall
Asst. Prosecuting Attorney
7-M Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106

For Defendant: Mr. Patrick Berrigan

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EXHIBITS

(None Marked)

TRANSCRIPT COPY
MR. HALL MR. BERRIGAN

SIGNATURE

The witness's signature to his deposition is waived.

DEONTA KINNEY

a minor, being produced, sworn and examined on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MR. BERRIGAN:

Q. Deonta, I'm going to be asking you some questions, and maybe Mr. Hall, about the day that your mom had her neck cut. - -

A. Uh-huh.

Q. - - way back in January of last year. Okay?

A. (The witness nodded.)

Q. And one of the things that you need to do when you're answering the questions is just answer Yes or No, whatever it is that you want to say, and tell me a little bit about what it is that you know, okay?

But there is one thing that we need to do, is that you need to answer like say Yes and say No instead of shaking your head, because I would shake my head usually if I was answering questions. But in order for this lady to write down everything that we say, we have to talk. Okay?

A. Okay.

Q. The other thing is that there's no reason to be nervous. This isn't any kind of test or anything. Just tell us what you remember, that's all. Okay?

A. Okay.

Q. How old are you, Deonta?

A. 12.

Q. What grade of school are you in?

A. Fifth - - I mean, Warford.

Q. I'm sorry - - I didn't hear you.

A. Warford, the school.

Q. Warford School. and you're in the fifth grade?

A. Right.

Q. You're a year ahead of your brother, right?

A. Uh-huh.

Q. And you're smarter than him?

A. Yes.

Q. Where do you live now, Deonta?

A. 11018 Wabash.

Q. Here in Kansas City?

A. Yes.

Q. Who do you live with there?

A. My grandfather.

Q. Did you say your mother and father?

A. My grandfather ad my grandmother.

Q. I see. Okay. What are their names? - - your grandmom and your granddad.

A. Harold Kinney and Joanne Kinney.

Q. Did you say your grand - - let's see, your granddad, what was his name?

A. Harold.

Q. Harold - - that's my dad's name. Harold Kinney, okay. And your mom's name is Carol Kinney, right?

A. Right.

Q. Do you remember that day that - - I guess it would be that night that your mom got her throat cut?

A. Yes.

Q. We seem to think that was a Monday. Is that how you remember it, is that a day that you went to school?

A. Yeah, it was a day I went to school.

Q. Tell me about what you did after school that day.

A. That day after school me and my brother walked over to my uncle's house.

Q. What's your uncle's name?

A. Bam.

Q. Bam Kinney?

A. Yeah.

Q. Does he ever call himself Ben or Benjamin?

A. Calls himself Benjamin, and sometimes Ben.

Q. And he also goes by Bam, too; is that right?

A. Yes.

Q. Is that what his friends call him?

A. Yes.

Q. Do you know where he lived back then.

A. No.

Q. Was it near your school?

A. Yes.

Q. How did you know to go over there after school?

A. The morning before - - that morning, when my mom was walking out the door, she gave me a letter to give to the principal.

Q. What did the letter say?

A. For me and my brother to go over to my uncle's house.

Q. And did just you and your brother walk over to your uncle's after school?

A. Yes.

Q. How come you needed a letter for the principal?

A. Because for my - - for them to call my uncle for my uncle to know that we were coming over.

Q. I see. After school was out?

A. Right.

Q. What time did you get out of school back then?

A. 3:30.

Q. And did you go right over to your uncle's without stopping?

A. Yes.

Q. What did you do once you got over there?

A. Me and my brother - - yeah, we did our homework, and went back - - and then we went up to the park.

Q. Now, when you went over to Bam's with your brother Raymond, who was over at Bam's house?

A. About three guys.

Q. Do you know who they were?

A. One chubby one, one tall and skinny, and one short one with the curl.

Q. The chubby man, what was his name?

A. I think his name was A.J.

Q. And had you ever seen him before?

A. No. That was the first day.

Q. The man that was tall, did you say he was tall and skinny?

A. Yeah, and had an Afro.

Q. An Afro style haircut?

A. Yeah.

Q. Was it a long Afro or a medium or a short one?

A. I'd say it was a medium.

Q. Do you know his name, the man with the tall, skinny body and the medium Afro?

A. No.

Q. Had you ever seen him before?

A. No.

Q. When you say he was tall, was he taller than Bam?

A. No, about the same size.

Q. He was taller than the chubby man?

A. Yeah.

Q. What about the shorter fellow with the curl? Let me first ask you, what do you mean by a curl?

A. He had a jerri curl.

Q. A jerri-curl haircut?

A. Yeah.

Q. Do you know his name?

A. No.

Q. Had you ever seen him before?

A. No. That was the first day.

Q. And these three men were all over there with Bam or were they there by themselves?

A. With Bam.

Q. What were they doing, Bam and these three men?

A. They were playing cards.

Q. Was there anybody else over at Bam's house when you and Raymond got there after school other than Bam and these three men?

A. No.

Q. You say that after you got to Bam's you did your homework; is that right?

A. Right.

Q. Did somebody watch you do that or tell you to do your homework?

A. We did it on our own, but those three guys were watching.

Q. Then after you did your homework where did you go?

A. Up to the park.

Q. Who went up to the park?

A. Me and my brother and Bam's son.

Q. Do you know Bam's son's name?

A. Rodney.

Q. How old is Rodney?

A. He was three.

Q. Does Bam have a son named Ronnie?

A. Yeah - - that's his name. I get his name mixed up.

Q. Is it Ronnie or Rodney?

A. Ronnie.

Q. Does Bam have any other children?

A. Yeah, a little girl.

Q. What's her name?

A. Jasmine.

Q. Jasmine?

A. Yes.

Q. So Ronnie was over at Bam's house then, too; is that right?

A. Right.

Q. Was there anybody else, then, other than the people you've already told me about?

A. No.

Q. Was Bam's wife or girlfriend there, Gwen?

A. Yeah, but she was next door at her mother's house.

Q. Do you know her mother's name?
Does Dorothy, does that ring a bell?

A. Yeah, Dorothy.

Q. Dorothy; is that right?

A. Yeah.

Q. That's Gwen's mother?

A. Right.

Q. Do you know what Dorothy and Gwen were doing?

A. No.

Q. Where was your mom when you went over to Bam's house?

A. At work.

Q. Do you know where Don Wright was?

A. No.

Q. How long did you stay up at the park?

A. About an hour.

Q. And then what did you do after you left the park?

A. Me and my brother and Ronnie went back home, down to Bam's house, to get a drink, but only those two went back up to the park after we got a drink and I stayed in to watch television with Bam.

Q. So you and Raymond and Ronnie all came back to get a drink, then Ronnie and Raymond went back to the park and you stayed at Bam's house?

A. Right.

Q. You say you watched television?

A. Right.

Q. Do you remember what you were watching on TV?

A. The Addams Family.

Q. The Addams Family . What channel are they on anymore?

A. I don't know.

Q. You don't know? Okay. Who were you with then when you were watching television at Bam's?

A. I was sitting on the couch, right next to Bam.

Q. So Bam wasn't playing cards anymore, then?

A. No. He quit.

Q. What about the other three men, were they still playing cards?

A. Yes.

Q. Who was playing now that Bam had left?

A. Only - - only the three guys. But then they started to arguing.

Q. What were they arguing about?

A. About who was winning or not - - who was winning or not.

Q. And the only one of the three that you knew the name of was this A.J. guy?

A. Right.

Q. How did you find out his name?

A. Because the - - that day, when they were about to leave, there was a blue Trans Am pulled up and this girl and this other guy got out of their truck - - I mean, the car, and then came in the house.

And then when - - I was watching TV, and the girl said, Let's go A.J. So A.J. got this bag that was full of money and went and got into the car.

Q. And the girl was talking to this chubby fellow that you had seen playing cards?

A. Right.

Q. And he got up and went with her?

A. Uh-huh.

Q. Yes or No?

A. Yes.

Q. That's another thing we talked about earlier. You answered, but you have to say Yes or No, okay? It's kind of like a game that we play. I understand what you mean but it's just so that we can get it down right. Okay?

A. Okay.

Q. So you found out who A.J. was when this girl came over with this guy out of a blue Trans Am, right?

A. Right.

Q. Let's go back to when you were watching television, for a second, with Bam. Okay?

A. Okay.

Q. Who was at the house at that point other than Bam and you and the three men that you had seen playing cards?

A. That was probably it.

Q. Did you watch any shows other than the Addams Family?

A. No.

Q. What did you do after you watched the Addams Family?

A. Went outside to see what my brother was doing.

Q. Did you go back to the park?

A. No.

Q. Where was your brother when you went outside.

A. They were up on a hill, playing around.

Q. So they had left the park, then?

A. Yeah.

Q. Did you play with them outside for a while, or did you come right back in?

A. I told them to come in, because it was getting dark, and so they came in.

Q. Now, when your brother came in with Ronnie - - there was you and your brother, Raymond, and Ronnie, the three men, and Bam still in the house, right?

A. Right.

Q. Did anybody else come into the house during the course of the evening?

A. Yeah. Gwen.

Q. Was Gwen the next person that came?

A. Yes.

Q. Gwen came over from next door; is that right?

A. Yes.

Q. Did anybody give you any food to eat?

A. No.

Q. What did you guys do after Ronnie and Raymond came inside?

A. We didn't do anything, because it was almost time for me and Raymond to go. So we went into the playroom, played for a little bit.

Q. Played in the playroom?

A. Right.

Q. During the time that you had a chance to see these three men playing cards, and Bam, did you see anybody selling anything?

A. Yeah, the three men.

Q. What were they selling?

A. That crack and cocaine.

Q. You know what that is, crack cocaine?

A. Yeah, it's that powdery stuff, and the crack is the hard rocky stuff.

Q. The cocaine is kind of white powder, is that right?

A. Right.

Q. And then you say the crack is - - what does it look like?

A. It's sort of little yellow, and it looks like pieces of rubber,

but it isn't.

Q. Kind of like a small piece of rubber or a rock?

A. Yeah.

Q. But it's yellow.

A. Right.

Q. What does it come in? Does this come in a bag of some type?

A. Yeah, it was a small - - it was like, you know, Reynolds stuff that - - you snap this shut. They used those. But they were smaller.

Q. Those teeny-tiny little plastic bags?

A. Right.

Q. They look like the kind of bags that you would put your sandwich in, right, they'd have a zip-loc top; is that right?

A. Right.

Q. Only they're just little ones.

A. Yes.

Q. These men that were selling the crack cocaine, who were they selling it to?

A. About to everybody that they seen, almost. They asked them, and then the people would probably say Yes, because I seen them selling it to people that was in cars coming up our

block. Some people got out of the car and came up to the house and rung the doorbell, because they already new that they were selling it.

Q. Did you know before you went over to your Uncle Bam's house that day that that's something that took place at that house, that people sold drugs there?

A. Yes.

Q. How long had that been going on, the best you know?

A. About two or three weeks.

Q. Had you ever been there before when people were selling drugs at Bam's house?

A. Yes.

Q. And you say that people came up in cars and they would get out? And what would they do?

A. Come up and ring the doorbell, and Bam would answer it.

Q. Was it always Bam that answered the bell?

A. No.

Q. Who else answered?

A. The other guy - - I've forgotten his name. Gwen would answer the door, or Gwen's mother.

Q. So either Dorothy or Gwen or Bam - -

A. Uh-huh.

Q. - - or some other guy?

A. Right.

Q. This other guy, was that one of the three men that you saw playing cards?

A. No.

Q. Some other fellow?

A. Right.

Q. He wasn't there that night?

A. No. Sometimes - - selling wasn't going on at Bam's house, it was going over at Gwen's mother 's house.

Q. I see. So nobody was coming up to Bam's house, they were going over to Dorothy's house?

A. Right. Because Dorothy was the only that was selling it, making the stuff, and Bam was just giving it to them.

Q. Bam was the one that gave it to the customers?

A. Right.

Q. How was Bam able to do that if he was over at his house and Dorothy was making it over at her house?

A. You know, sometimes - - you know, Gwen's mother would call over at Bam's house and tell - - and Gwen - - Gwen would tell Bam to come on over because they have customers and because they wouldn't - - because Gwen and Dorothy were never sure that - - they didn't want to be seen. They were just

back there making it, and they would always tell Bam to go in there and give it to them.

Q. I see. The night that we're talking about, did Bam have to leave his house and go over to Dorothy's to sell some of this cocaine?

A. No. Only the people that was there were selling it.

Q. The people that were where?

A. You know, the three guys. They were the only people that were selling it that night.

Q. Now, I'm a little confused, because these three guys that were playing cards and selling the cocaine, weren't they over at Bam's house?

A. Right. You know, after the customer leaves from Dorothy's house, Bam would go back over to his house, after a few customers come.

Q. And these other men, they would do the same, go over to Dorothy's , and then come back?

A. No, they'd stay. But then they would tell Bam - - they would stay at Bam's house until Bam run that stuff that they make over at Bam's house over to Gwen's house, so Bam was the one that was giving - - they were telling Bam to give the stuff to the customers.

Q. And where were these men getting this cocaine?

A. I don't know.

Q. Did they have it with them?

A. Yes.

Q. And they would just give it to Bam and he'd go over to Dorothy's and give it to people that came up to her door?

A. Yes.

Q. Was Bam bringing back any money for these men?

A. No. They would tell - - they would tell Bam to keep the money over at Gwen's mother's house.

Q. I see.

A. They keep it in this big box.

Q. And you've seen this box of money?

A. Yes. Well, it ain't quite a box. It's a big sack that stands like that (indicating).

Q. How much money was in there?

A. It was $20 bills, 10's and 5's and 1's.

Q. How big of a sack is it?

A. About like that (indicating).

Q. Is it as big as a grocery sack, like this (indicating)?

A. Yeah, but it had a handle on it.

Q. It had a handle on the top?

A. Yeah, a stringy handle.

Q. Is it the same size as that kind of a sack?

A. Yes.

Q. Full of money?

A. But it was supposed to - - you know, it was a sack that had - - you know, when you get clothes, they put them in that kind of sack, and they have a handle.

Q. That you can carry?

A. Yeah. They had it in that.

Q. But is it the same size as this (indicating)?

A. Yes.

Q. Was it full of money?

A. Yes.

Q. Did you see it on the night that your mom got stabbed?

A. Yeah, it was the same night.

Q. And was it fully of money that night?

A. Yes.

Q. Well, when Gwen came over from Dorothy's, what did she come over for?

A. To feed her baby and give Ronnie some supper, because me and Raymond didn't want any.

Q. You didn't want any food?

A. Huh-uh, because it was about time for us to go home.

Q. How did you know when you were supposed to go home?

A. My mother called.

Q. I see. Did she call Bam's house?

A. Yes.

Q. Did you talk to her?

A. Yes. She said for me - - she said we have school in the morning, so tell Bam that we've got to go home now.

Q. Do you know what time it was, Deonta, when your mom called?

A. Yes. It was about 6 or 6 after - - I mean - - yeah, 6 after 6 - - I mean 6 after 9.

Q. 6 after 9?

A. Yes.

Q. How do you know what time it was, how do you remember that?

A. Because you can see off the clock at Bam's house.

Q. When you were on the phone, you could see the clock?

A. Yes.

Q. I guess what I mean is How you remember that so clearly that you - -

A. I don't know.

Q. You just - -

A. Because I can remember when my mother called.

Q. Okay. What did your mom tell you about when she was coming to get you?

A. She said we had school in the morning, and she didn't want us staying up so late, so we had to go home.

Q. Now, getting back to these three men that were playing cards and selling crack cocaine, did you have an opportunity to hear some of the men talk to each other?

A. Yeah, A.J. had - - you know, the fat, chubby one?

Q. Yes.

A. He had - - he had a gun right there where he was sleeping on the couch, because he fell asleep.

And then you can hear - - you can smell the cocaine and crack that they were burning, because Bam came in there and said that the police were coming, so they shut the door on Bam's leg almost, but Bam got out of the way in time and they locked it - - the door.

So me and Raymond ran in the playroom, locked the door, and kept it shut, and put something - - something under the door for them to make - - getting the smell in the door.

Q. When did all that happen when Bam said the police were coming?

A. They hurried up and took almost all of the crack out of the bag and put it on - they put it in this kind - - this pipe, and they put it on the stove, and they just cut the stove on high and it burned it.

Q. Did they do that on purpose?

A. Yes.

Q. Why did they do that?

A. Because they didn't want the cops catching them.

Q. They were trying to get rid of this crack cocaine?

A. Yes.

Q. You say that you could smell the cocaine. Could you smell it before they started to burn it?

A. No, you could smell it coming through the doorway, even though you put something there.

Q. But that was only after they tried to burn the cocaine when Bam said the police were coming?

A. Right.

Q. Do you know why Bam said the police were coming?

A. Yeah. Because the police cars going up the street, turning around and come down the street, they keep doing that, and the helicopter kept flying over Bam's house.

Q. Have you ever seen the helicopter flying around with its big light - -

A. Yes - - yes.

Q. Did it have its lights on Bam's house?

A. Yes.

Q. Do you remember if that was before or after your mom called on the telephone?

A. After.

Q. After?

A. Yeah, and Bam knocked on the door when the police went away - - he said, Yeah - - he said that It's about time for you guys - - you guys should be in bed already, so get going. So me and Raymond said goodbye to Ronnie and went out the door to walk home.

And then we got home, and there was my mom and Don and this other guy playing cards.

Q. All right. Now, before we get to that, I wanted to ask you a question about these three men that we selling the crack cocaine and playing cards.

I asked you if you had a chance to hear them talk - -
A. Uh-huh.

Q. - - and you told me about A.J., right?

A. Right.

Q. Do any of those men have any strange accents? Do you know what an accent is?

A. Huh-uh.

Q. Do they talk funny?

A. Yes. They almost talk like us, but has this weird voice in it. They almost. But their words don't come out quite like ours.

Q. Could you imitate how they talk?

A. Huh-uh.

Q. No?

A. Huh-uh.

Q. Had you ever heard anybody else talk like that?

A. No.

Q. Do you yourself know anybody that's from Jamaica or people called Jamaicans?

A. No, I don't know anybody else except for A.J.

Q. How do you know that A.J. is Jamaican?

A. Because Bam told me that - - he said, you know, when we were coming home, there was - - there was three dudes - - people were there.

So I went over to Bam's, I asked, Who is coming - - who is getting out of the car, and he said, Oh, be a couple of my Jamaican friends.

Q. When did you have this conversation with Bam?

A. Right when we got in the door, we seen the three - - the three people getting out of the car.

Q. And they were going to Bam's?

A. Right.

Q. This is when you and your brother, Raymond, first got over to Bam's house?

A. So I went over to Bam to ask him who was that.

Q. And what did Bam say?

A. A couple of my Jamaican friends.

Q. But there were three men, weren't there?

A. I know - - but he meant to say three.

Q. Did they all talk the same way?

A. No, not - - only one of them did. It was the one with the curl.

Q. The one with the curl?

A. Right.

Q. Did he talk funny - -

A. He talked like us.

Q. He talked regular - -

A. Right.

Q. - - and the other two men, they talked kind of funny?

A. Right.

Q. And Bam told you they were his Jamaican friends?

A. Right.

Q. But one of the men didn't talk funny?

A. He didn't talk - - so I was right the first time about the couple, only two was talking Jamaican, one was talking regular.

Q. You were right, when Bam said a couple of my Jamaican friends, only two of the men talked funny?

A. Right.

Q. And Bam told you one of those guys - -

A. Were not. He said, Two are Jamaican and one is regular.

Q. Now, the regular guy, the guy that talked regular, was he the man with the jerri curl - -

A. Right.

Q. - - or was he A.J. or was he the tall, skinny man with the Afro?

A. He was the one with the curl.

Q. The jerri curl?

A. Yes.

Q. And you say that A.J. and the tall skinny man with the Afro, they both talked funny?

A. Right.

Q. And those are the people that Bam indicated to you were Jamaicans?

A. The one that was tall, I think he talked funny, because it sounded like he does.

The one with the jerri curl tried to talk like the Jamaican, but me and my brother knew he wasn't, because you can tell, when he came in - - first he was trying to talk like one, because he had the knife up to Don's throat. And when he came in to get the knife, he said, Let me have the knife. So I knew that he wasn't Jamaican.

Q. Now, you've jumped ahead of me quite a bit there. I was talking about the three men that were over at Bam 's.

A. Uh-huh.

Q. Are those the same three men that came over later in the night at your house?

A. Yes.

Q. Are you sure about that?

A. Ye.

Q. You're telling me that the three men that you saw at Bam's house, playing cards, are the same three men that came over to

your house?

A. Yes, they might be.

Q. What do you mean, they might be?

A. Because the jerri-curl - - the one with the jerri curl looks exactly the same as the one that came over to our house, and the one that was skinny, had like bellbottoms and an Afro, he was the one - - he looked exactly like the one that came to our house but had on different clothes, because they had left right when we went out the door.

Q. When you and Raymond left Bam's, these other men left Bam's?

A. Right.

Q. Did you see how they left his house, Bam's house?

A. No. We - - I didn't pay any attention. I just kept walking.

Q. Now, you told me that, as you remember it, when you left Bam's, you and Raymond just walked home?

A. Right.

Q. You're sure that your mother, Carol, didn't come over and pick you up?

A. She didn't come and pick me up because our house wasn't far from Bam's.

Q. And you and Raymond walked home alone, then; is that right?

A. Right.

Q. When you got home, who was there at your house?

A. Only - - only Don, my mom, and this other guy.

Q. Do you know the name of this other guy?

A. No.

Q. Now, at that time you were living where?

A. On Prospect somewhere, I don't know - -

Q. Is that 4201 Prospect?

A. Yes.

Q. On the corner of 42nd Street and Prospect?

A. Yes.

Q. This other man that was there at your house with Don and your mom, Carol, had you never seen him before?

A. No.

Q. And you don't know his name?

A. No.

Q. Now, what were they doing when you and Raymond came in?

A. They were playing cards.

Q. And what did you do when you and Raymond got home?

A. We had - - we had to go straight to bed.

Q. And did you go straight to bed?

A. Yes.

Q. Did you go to sleep?

A. I did, but my brother couldn't sleep.

Q. How do you know your brother couldn't sleep if you were asleep?

A. No, he - - he woke me up right almost in the middle of the night.

Q. Okay.

A. But my mother was still awoke.

Q. When you went to bed, you and your brother, you're telling me that you fell asleep right away?

A. Right. Not right away, but it didn't take me long.

Q. Where were you sleeping then?

A. In my mother's room.

Q. What color is her room?

A. It's white.

Q. The walls are white?

A. Right.

Q. Where is that located in the house?

A. It's the room right in back of the living room.

Q. Now, you kind of had two living rooms in that house, didn't you?

A. Yes.

Q. Is one in the front of the house, when you come in the front door - -

A. And one in the side.

Q. And one in the side?

A. Right. And there's a little doorway right there in the one on the side, you can go straight in there where the bedroom was.

Q. Okay. So this bedroom was right behind the living room that's on the side of the house?

A. Right.

Q. When you went to bed, and you last saw your mother and Don Wright and this other man, what were they doing?

A. All they were doing was playing cards and talking.

Q. Could you tell me what room they were in?

A. The front - - the one - - right when you go in the door, the one in front.

Q. The front living room?

A. Right.

Q. You woke up during the night; is that right?

A. My brother woke me up.

Q. How did your brother wake you up?

A. He kept shaking me until I woke up.

Q. Did he say anything to you?

A. Yes.

Q. What did he say?

A. He told me that he couldn't sleep. So I said, Just go in there and tell mom that you couldn't sleep. And so he went to tell mom. And she just said, Lay down in the bed and just shut your eyes.

So Raymond tried it. Then he got some sleep. And then when we heard the door bust open, he woke up.

Q. When Raymond went in to talk to your mom about not being able to sleep, did you go with him or stay in the bedroom?

A. Stay in the bedroom.

Q. And he came back to the bedroom then?

A. Right.

Q. And went to sleep?

A. Right.

Q. Did you go to sleep, too?

A. I was already asleep.

Q. So you just woke up when your brother told you that he couldn't sleep, and then you went back to sleep?

A. Right.

Q. You never got out of bed. Right?

A. Right.

Q. Okay?

A. Right.

Q. You woke up again later, is that right?

A. Yes.

Q. How did you wake up this second time?

A. Raymond - - this time Raymond pushed me out of the bed.

Q. He pushed you out of the bed?

A. Right.

Q. Did he say anything to you when he did that?

A. Yes. He was scared, so he jumped like (indicating) - - he just made a sudden jump and pushed me out of the bed. So that woke me up, and told me that someone was in the house.

So I got back in the bed and acted like I was asleep.

Q. Why did you do that?

A. Because I didn't want to - - I didn't know who it was and I was trying to go back to sleep.

Q. Did you see anybody at that time, Deonta - -

A. No.

Q. - - when Raymond said something had come in the house?

A. No. I didn't get up.

Q. You just went and pretended you were asleep?

A. Right.

Q. Were you - -

A. I was about to get up until this guy came and looked in the bathroom, and then I was about to get out of bed, he said, Lay back down, so I got back into bed.

Q. Now, that man that looked into the bathroom, did he come into the bedroom?

A. Yes.

Q. What did he look like?

A. That was the tall one with the Afro.

Q. And what kind of clothes did he have one?

A. He had on - - I think a black jacket. And they all had gloves on.

Q. I think you told me earlier that one of the men had changed clothes from the time that you saw him.

A. They all did.

Q. They all did. All right.

A. Right. Because when A.J. came in - - when I saw A.J., he had one some dress pants, some dress shoes, and a dress shirt.

Q. Now, when was he wearing the dress pants and dress shirt - -

A. When he was over at Bam's, playing cards.

Q. Okay. And then you saw him again later at your house?

A. Right.

Q. What kind of clothes can A.J. have on then?

A. He had on a black jacket, I think some jeans, and he had on yellow biking gloves with the fingers cut out.

Q. The man that came into the bedroom first, the first man that you saw when you woke up after your brother pushed you off the bed, he had on a black jacket and gloves, is that right?

A. Right.

Q. Do you remember what color gloves he had on?

A. Black.

Q. This jacket, do you know what kind of material it was made out of?

A. I think it was leather or something.

Q. Have you seen black leather jackets before?

A. Yes.

Q. Do you know what they look like?

A. They feel kind of - - they feel like - - like those kind of books right there, the red, they feel like those.

Q. This kind of book here (indicating)?

A. Yeah, but it's smoother.

Q. Smoother. Okay. Did the tall man with the Afro, with the black jacket and the black gloves, did he have any kind of facial hair like a mustache or a beard or anything like that?

A. I can't remember that. All I can remember is his hair.

Q. He's one of the men that you told me earlier talked funny, like a Jamaican; is that right?

A Right.

Q. Was he still talking that way when he told you to get back in bed or be quiet or whatever he said to you?

A. When he said Be quiet, he didn't sound like Jamaican.

Q. Did you ever hear him say anything else while he was over at your house - -

A. Yes. - -

Q. - - on Prospect?

A. No. I think that's it. Yes, that was all he said, because he was busy ripping out the cord to the fan and getting tape from the other room.

Q. The fan that he was taking the cord off of, where was that located?

A. In the bedroom where we were.

Q. Did he do that right then when he was telling you to be quiet?

A. No.

Q. When did he do that?

A. He did it after he looked in the bathroom and then he came back in the room. And then he ripped out the cord.

Q. Did he do anything else when he first came in the bedroom other than to tell you to be quiet?

A. No.

Q. Why was he telling - -

A. Yes.

Q. What?

A. When he sliced my mother's neck, he dragged her - - he dragged her in there, turned up the TV real loud.

Q. Wasn't that later on?

A. Right.

Q. I'm going to get to that in just a minute. But when he first came in the room and told you to be quiet, did he do anything?

A. Yes. He went to use the bathroom. That's it.

Q. He went to use the bathroom?

A. Right.

Q. Could you tell whether or not he used the bathroom?

A. Yes. You can hear it, and you could hear him flush the toilet.

Q. Do you remember what kind of pants that man had on?

A. Huh-uh.

Q. No?

A. No.

Q. What about his shoes, do you know what kind of shoes he had on?

A. No.

Q. But you do remember that it was the black leather jacket and some black gloves?

A. Right.

Q. After the man came in and told you to be quiet, what's the next thing that happened?

A. This guy - - the man with the curl had - - had a knife up to Don's throat.

Q. Now, were you able to see Don from where you were in the bedroom?

A. No. But I could - - afterwards, you - - - - I can tell that part later.

Q. How did you see this man with the curl with the knife up to Don's throat?

A. You could see him when he went to get the knife from the kitchen.

Q. You saw the man with the jerri curl get the knife out of the kitchen?

A. Right.

Q. And you saw that from where you were in the bedroom?

A. Right.

Q. Were you still in the bed?

A. No.

Q. Where were you?

A. They told me and my brother to stand up and get against the wall.

Q. Who told you that?

A. The skinny one.

Q. The man with the - -

A. Afro.

Q. - - Afro. All right. And you got up and stood against the wall?

A. Right.

Q. And this was in the bedroom still?

A. Yes. And then - - yeah. Then they took the wire, wrapped it around both of my brother's feet, and then they did me the same. And then they took an even longer one and wrapped it around both of ours.

And then they wrapped our hands, like one of my hands were attached to Raymond's and one of - - and the other one was attached to Raymond's.

Q. I want to try to get this in order, I mean, what happened first and then happened second and then third. Okay?

A. Okay.

Q. Let me ask you this. After the man with the Afro came in and told you to be quiet, what is the very next thing that happened?

A. The very next thing that happened. Yeah, you can hear Don keep telling the man that he doesn't have any money.

Q. Could you hear the man saying something to him?

A. Yes.

Q. What was the man saying?

A. He said, Don't be giving me that stuff. And then - - he had the knife up to Don's throat, and then Don said, Don't kill me, so he sliced his neck.

Then the other guy picked him up just to make sure.

Q. I'm going to interrupt you right now. Did you see the man cut Don's throat?

A. No. You can hear - - you know how people yell, and then the spit come sup and - - then you can hear them holler and the spit coming up at the same time.

Q. And you could hear that taking place but you couldn't see them?

A. Right.

Q. Could you tell from where the voices were coming from where Don was?

A. Yes.

Q. Where was he?

A. In the room right when you come in the door, the first one.

A. The front living room?

A. Right.

Q. And then at the time that you heard this, what you think was

Don's throat being cut, could you see any of the three men?

A. I could only see one.

Q. Which one could you see?

A. The tall one.

Q. The tall man with the Afro?

A. Right.

Q. What was he doing at the time that you heard Don yelling?

A. Standing - - sometimes he would look there where my mama was and sometimes look in the bedroom, so he kept going back and forth.

Q. But he wasn't in the front living room?

A. No.

Q. You also said something about one of the men having a knife; is that right?

A. Right.

Q. Which of the men had the knife?

A. The one with the jerri curl.

Q. And did you actually see the man with the jerri curl get the knife?

A. Right.

Q. When did you see that take place?

A. Right when he came in the door.

Q. Did he come in the door after the man with the Afro came in and told you to be quiet?

A. They all came in the door at the same time, but they scattered out. One - - two were in the front room and one went and looked in the bathroom and then came in there where we were, me and my brother was.

Q. All right. That's the man that you've said is the tall man with the Afro; is that right?

A. Right.

Q. When the man with the jerri curl got the knife from the kitchen, was that before or after you heard Don yelling?

A. Before.

Q. What kind of clothes did the man with the jerri curl have on?

A. I can't remember him.

Q. You can't remember him?

A. I can remember his jerri curl, but I can 't remember the clothes he was wearing.

Q. Do you remember the clothes that he was wearing earlier in the evening, when he was over at Bam's house?

A. Yes.

Q. What - -

A. He had on jeans - - I can't remember his shoes, but he had on jeans and a short-sleeved white shirt.

Q. And if I understand you correctly, these three men were over at Bam's house the whole time that you were over at Bam's house; is that right?

A. Right.

Q. The man that had the jerri curl and the jeans and the white shirt, are you sure that he changed clothes when he came over to your house?

A. I'm not sure about him, but I think the other two, they did change their clothes.

Q. Do you remember whether or not the man with the jerri curl had on gloves when he came over to your house?

A. Yes, he had on gloves.

Q. What kind of gloves did he have on?

A. Black. Two had on black, and one had on yellow.

Q. And it's A.J. that had the yellow gloves.

A. Right.

Q. When you heard Don yelling and then this sound that you heard, could you see where your mom was and see the other man that was in the house earlier with your mom?

A. No.

Q. Were you able to see from the bedroom this side living room?

A. Yes.

Q. And your mom and the other men were not in that room?

A. Huh-uh, no.

Q. Yes or No?

A. No.

Q. What's the next thing that you saw or heard after you heard Don telling and then what you think was his throat being cut?

A. I heard a gun.

Q. You heard a gun?

A. Yeah. But not - - it didn't go off. It - - it sounded like it hit somewhere.

Q. How do you know it was a gun?

A. Because A.J. was carrying a gun in his jacket, he had it inside his jacket, a pocket in the jacket (indicating).

Q. You saw him carrying a gun while he was at your house?

A. Right.

Q. What did the gun look like?

A. Brown.

Q. The whole gun was brown?

A. No, just the handle.

Q. The handle.

A. And the other part of it was black.

Q. You told me earlier that you had seen one of the men with a gun when they were at Bam's house; is that right?

A. Yes. Two of them.

Q. Two of them?

A. Right.

Q. Which of the men had guns when they were at Bam's house?

A. The one with the curl, and his gun was silver. And A.J. was using the other-guy-with-the-Afro's gun, which was silver, and the guy with the Afro took A.J.'s gun and put it in his pocket of this coat, his jacket pocket.

Q. How did you know that the gun that A.J. was using at Bam's house belonged to the man with the Afro?

A. Repeat that over.

Q. Sure. You told me that when these men were at Bam's house, two of the men had guns, right?

A. Right.

Q. And you told me that the man with the jerri curl, when he

was at Bam's, he had a silver gun; is that right?

A. Right.

Q. Now, which of the other two men had a gun, or did they both have guns when they were at Bam's?

A. They both did.

Q. You're telling me now that all three of the men had guns at Bam's?

A. Not all of them were carrying them. All of them were carrying them, but not in the way - - because the guy that had the Afro went into the car and put the gun away.

Q. When did he do that?

A. Right when the guy gave A.J. his gun and A.J. have him his gun to put in the car.

Q. This all took place at Bam's house?

A. Right.

Q. You told me that A.J. gave to the man with the Afro the gun that A.J. had?

A. Right.

Q. And the man with the Afro took the gun A.J. had given him to the car?

A. Right.

Q. What was this car like?

A. It was a green car.

Q. Do you know what kind of car?

A. No.

Q. Then the man with the Afro gave A.J. a gun; is that right?

A. Right.

Q. This was at Bam's?

A. Right.

Q. What kind of gun did the man with the Afro give to A.J. at Bam's?

A. It was a silver gun.

Q. The gun that A.J. have to the man with the Afro - -

A. Right.

Q. - - what kind of gun was that?

A. It was a brown.

Q. Do you mean brown-handled gun?

A. Right.

Q. Just a few more minutes. You're doing a terrific job.

Could you tell whether or not the gun that A.J. had when he was over at your house was the same gun with the brown handle that the man with the Afro had given to him over at Bam's house?

A. Yes, it was.

Q. It looked like the same gun to you?

A. Yes.

Q. Did any of the other men have a gun when they were over at your house later that night?

A. No.

Q. The only gun that you saw was this one with the brown handle?

A. Right.

Q. And A.J. had it?

A. Right.

Q. Did you see any of the other men with the knife other than the man with the jerri curl?

A. There was only one. It was the one with the jerri curl.

Q. The other two men didn't have knives?

A. No.

Q. And this question started when you were telling me about you heard a noise like a gun, right?

A. Right.

Q. And I was asking you how you knew it was a gun, this noise that you heard. How did you know it was a gun?

A. Because when - - after the accident happened, I was going in there to cut on the lights, and then the guy that was with my mom and Don asked - - I got up, and I thought it was one of the robbers. I was about to yell, but I didn't. And then he said, Cut back off the lights. And I said, What happened to you? And he said, The fat, chubby one hit me with a gun.

Q. So that's how you knew - -

A. Knew - -

Q. - - later on that it was a gun?

A. And then before. Because you can tell the way someone hits anything else by the way you hit them with a gun.

Q. Could you tell where this man got hit with the gun?

A. About right here (indicating) where A.J. was hitting me with his fist.

Q. After you heard this man get hit with the gun, what was the next thing that happened?

A. They all came in the room where me and my brother was.

Q. What happened when all three men came into the room where you and your brother, Raymond, were?

A. They tied us up, and then they went in - - the one with the jerri curl asked to let him have the knife.

So he went in the room where my mom was, and a few seconds later I heard my mom screaming. And then they all came in the room. And then they said, Let's go.

Q. All right. Now, first, all three of the men came into the

room together?

A. Right.

Q. And you say that they tied you and your brother up; is that right?

A. Right.

Q. Did all three of the men do that?

A. No.

Q. Who tied you up?

A. Only two.

Q. Which two?

A. A.J. and the tall one.

Q. With the Afro?

A. Right.

Q. What was the man with the curl doing while you and Raymond were being tied up by A.J. and the man with the Afro?

A. He was in there tying my mother up.

Q. How do you know he was tying your mother up?

A. Because after - - you know, after he sliced my mom's neck, he - - then they all - - then he came back in the room. And then the tall one with the Afro left and drug my mother into me and

Raymond's playroom and threw her down by the TV and cut the TV up real loud.

Q. But at the time you were being tied up, you and Raymond, were you able to see what the man with the jerri curl was doing?

A. No.

Q. All you knew is he left the room; is that right?

A. Right.

Q. And then after you were tied up by A.J. and the man with the Afro, what's the next thing that happened?

A. I could hear my mom scream.

Q. You said something to me about the man with the curl asked for a knife.

A. Yeah, from A.J.

Q. Did A.J. have the knife when he was tying you and Raymond up?

A. Yes, because he was cutting - - he was cutting the wire.

Q. And the man with the jerri curl came in and asked for the knife?

A. Right.

Q. And what happened after he asked for the knife?

A. He went in the room. Then a few seconds later you could

- - we heard my mother scream.

Q. The man with the jerri curl got the knife from A.J.; is that right?

A. Right.

Q. Do you know what room that he went into?

A. Yes. The front living room.

Q. Front living room?

A. Right.

Q. Is that where you heard your mother scream from?

A. Right.

Q. Could you see your mother in the front living room from where you were in the bedroom?

A. No.

Q. But you, from her screams, could tell that she was up in the living room, in the front?

A. Yes, because if you could - - if she was in the other living room on the side where there was a doorway, you can hear even louder.

Q. Plus you could have seen her then, too, couldn't you?

A. Right.

Q. When the men tied you up, did they put anything over your

eyes?

A. No.

Q. Did they put anything over your mouth?

A. Yes.

Q. What was that?

A. Tape.

Q. When you heard your mother scream, did she say anything?

A. No.

Q. What was the next thing that happened after you heard your mother scream?

A. The man with the jerri curl came back in the room. And then the one with the Afro went back in the room where my mother was and drug her in to me and Raymond's room.

Q. When you heard your mother scream, was the man with the Afro and A.J. still in the bedroom with you and Raymond?

A. Yes.

Q. They were there?

A. Right.

Q. You saw the man with the Afro drag you mother where?

A. Into our playroom.

Q. Where is the playroom?

A. Right across the hall.

Q. Across the hall from your mom's bedroom?

A. Right.

Q. What color room is that?

A. It was - - it had pink walls.

Q. And after the man with the Afro drug your mother into the playroom, what was the next thing that happened?

A. They cut up the TV real loud.

Q. Who cut up the TV?

A. The man with the Afro.

Q. And this television was located where?

A. In the playroom.

Q. Where your mother was?

A. Right.

Q. What happened after the man with the Afro turned the television up loud?

A. I was - - I started to cry a little. And then A.J. came over there and told me to be quiet, and I kept crying, so he kept hitting me, four times.

Q. A.J. hit you four times?

A. Right.

Q. What did he hit you with?

A. The side of the head.

Q. Did he hit you with anything?

A. The - - his fist.

Q. His fist. And you remember it was four times?

A. Right.

Q. And what was the man with the Afro and the man with the jerri curl doing while A.J. was hitting you in the side of the head?

A. I don't know.

Q. Were they in the room?

A. Yes.

Q. What happened after A.J. hit you on the side of the head?

A. I was knocked unconscious, but right - - I could - - I wasn't unconscious for a long time. But they were doing something else while I was knocked out a little bit. And then - - then I could hear them say, Let's go.

Q. Do you know what they were doing, Deonta, while you were unconscious?

A. No.

Q. So you woke up or became conscious –

A. Right. Became conscious. And I could hear them say, Let's go. But they had a flat on the car, because you could - - because the wheel was flat because there was the glass at the side of the street where the curb was.

Q. How did you know they had a flat?

A. Because they were still out there fixing the car when me and my brother were trying to get loose.

And then when me and my brother got loose, I ran in there to see if they were still there. I hopped on the couch, looked out the window. And then you could still see them - - A.J. - - they was telling him, Hurry up, get the tire in the trunk. And so then he put the jackhammer and the tire in the back of the trunk, and they just pulled off.

Q. Did you see the car that they were in?

A. Yes.

Q. Could you describe it for me?

A. It was that same green car.

Q. You say you saw these three men through the window?

A. Right.

Q. Which window was that you were looking out?

A. The front room window, right there - - there was a couch right there by the window.

Q. Now, the window that you looked out, does that look out onto Prospect or does it look out onto 42nd Street?

A. Prospect.

Q. And where was this green car that you saw?

A. it was right there along the curb. ^***
(Nothing about Datsun, I guess.)

Q. Along the curb where?

A. By the corner, right - - they were about to start pulling of, and they didn't quite have the tire and the jackhammer in the trunk.

Q. You say the car was near the corner?

A. Right.

Q. Was the car parked on 42nd Street or on Prospect?

A. You can see Prospect and 42nd Street.

Q. Okay. But which street was the car parked alongside? Do you know what I mean by that question?

A. On the right, right there (indicating). They wasn't parked up where the traffic was, that part, when you can come down the street.

Q. Do you know how Prospect runs from going downtown to out south?

A. Uh-huh - - yes.

Q. And 42nd runs across Prospect; is that right?

A. Right.

Q. Kind of like a T, like (indicating), right?

A. Right.

Q. What I wanted to know was whether or not the car was parked on Prospect or whether it was parked on 42nd Street.

A. Prospect.

Q. And was the front of the car facing towards downtown or was it facing towards Grandview?

A. I don't really know.

Q. You say that you saw A.J.; is that right?

A. Right.

Q. Outside, near the car?

A. Right.

Q. What was he doing?

A. He was - - he was putting the nuts back on the car.

Q. Did you see the other two men?

A. No. They were already in.

Q. Could you see them inside the car?

A. No.

Q. You told me, though, that the car had already started moving?

A. Yes, when - - they - - A.J. told them to start the car and start pulling off a little, and so he - - he already had the tire in it, but he didn't have it in all the way. And he didn't have the jackhammer in all the way. So he pushed that in and shut the hood, and then he went in and got in.

Q. When you say the "hood," do you mean the trunk of the car?

A. Yeah, the trunk.

Q. Do you know what I mean, the difference between the front of the car where the engine is and the trunk?

A. Yes.

Q. Where did he put the jack?

A. The trunk.

Q. Which part of the car did A.J. get in, the driver's side or the passenger's side?

A. The passenger's.

Q. Now, you weren't able to see the men in the car, right?

A. Right.

Q. So you don't know if there was just one man or two other men in the car, do you?

A. Yeah, you could tell. because the one with the curl told A.J. to hurry up, and you can see - - you could see the first one pulling off, you could see the one with the Afro.

Q. Where could you see the man with the Afro?

A. He was in the driver's seat.

Q. But were you able to see the man with the curl?

A. No.

Q. But you heard him?

A. But you could hear him.

Q. Where was he from where you could hear?

A. He was in the back seat.

Q. Did you, during the time these men were at the house, did you hear all of the men talk?

A. Yes.

Q. Did they sound any different than when they were at Bam's house?

A. No.

Q. Did any of the men sound - - talk funny, like Jamaicans?

A. Yes.

Q. Which of the men did?

A. A.J.

Q. What about the other two men?

A. I don't think - - I don't know about the one with the Afro, but the one with the curl, he didn't talk Jamaican.

Q. He talked - -

A. Regular.

Q. - - regular?

A. But in the accident, he tried to talk Jamaican, but when he asked for the knife he didn't talk like - - talk Jamaican.

Q. I thought you told me the man with the curl was the one that asked for the knife.

A. He did, he asked for the knife.

Q. Are you telling me that the man with the curl tried to talk Jamaican?

A. Right.

Q. Not the man with the Afro?

A. Right.

Q. I don't want to confuse you. Let's just make sure we're clear. You're not sure about the man with the Afro whether or not he's Jamaican or not; is that right?

A. Right.

Q. But you're telling me that the man with the curl pretended to talk like the Jamaican?

A. Right.

Q. But you could tell that he wasn't?

A. Yes.

Q. And you're sure that these three men that were in the house and did the stabbing of your mom and Don Wright are the three men that were at Bam's earlier in the evening?

A. Right.

Q. The same night?

A. Right.

Q. I only have a couple more questions for you, and then I'll let you go home, okay?

A. Okay.

Q. When you came over to the house, you and Raymond, after you left Bam's, and you came home, did you see Don or your mom or this other man smoking anything - -

A. No.

Q. - - or doing any kind of drugs?

A. No.

Q. How long did you know Don Wright?

A. Since I was small.

Q. Do you know whether he was engaged in this business of selling drugs like your Uncle Bam was?

A. No.

Q. Do you know what I mean by that?

A. Yes.

Q. When the men were going around your house that night, did you hear any of them asking about drugs?

A. Yes. The one with the curl was trying to ask them how - - where is the money and where does - - where doe he have any of that cocaine.

Q. Was there any cocaine kept in that house, as far as you know?

A. No.

Q. Do you remember talking to a police officer about what happened next - - oh, I guess it would have been a few days afterwards?

A. Yes.

Q. Almost a week after. Do you remember that?

A. Yes.

Q. And he showed you some pictures?

A. Yes.

Q. Did you pick out anybody?

A. Yes.

Q. Who did you pick out?

A. A.J.

Q. Did you pick - -

A. He looked like him.

Q. Did you pick a guy that looked like A.J.?

A. Yes.

Q. Did you pick anybody else out?

A. No.

Q. Did you have a chance to look at those pictures real well?

A. No.

Q. You didn't have a good chance to look at them?

A. Not real, real well, but I got to look at them.

Q. Let me ask you, Deonta - - I know it's been a long time since you've seen those pictures, but are you sure that none of the other men in the pictures was a man that was at your house that night?

A. I don't know.

Q. You don't know?

A. Huh-uh.

Q. You told me that the tall man with the Afro, he didn't have beard or a mustache; is that right?

A. He didn't then.

Q. He didn't then?

A. Yes.

Q. What do you mean by that?

A. He didn't have one when the accident happened, he didn't have a mustache or a bread.

Q. Do you know if he has one now?

A. I don't know.

Q. What about the other two men, A.J. and the man with the jerri curl?

A. A.J. had a beard, a little beard, and he had a mustache.

Q. What about the man with the jerri curl, did he have a beard or a mustache?

A. No.

Q. Do you know how old these men were?

A. The one with the jerri curl looked like he was about 21. I don't know about the rest.

Q. And you'd never seen the man with the jerri curl before this

night?

A. No.

Q. The green car that you saw, was it a big car or a little car?

A. Big.

Q. Do you know how many doors it had?

A. Four.

Q. You don't know what kind of car it is?

A. No.

Q. Is that because you don't remember or is it some kind of strange car?

A. It was strange, and it - - it was sort of raggedy, almost like.

Q. Kind of beat up?

A. Yes.

Q. Could you tell how - - was it a old car or a new car?

A. Old.

Q. I don't know if you got a chance to see the license plate. Did you?

A. No.

Q. Did you see the men drive off?

A. Yes.

Q. Which direction did they go?

A. They went - - they went straight, and then they took a left.

Q. Straight towards where?

A. They took - - they went straight, from our block they went straight down (indicating), and then they took a left (indicating).

Q. Before they took the left, were they going towards downtown or away from downtown?

A. Downtown.

Q. Towards downtown?

A. Yes.

Q. And then thy took a left going towards the Paseo?

A. Right.

Q. Have you seen any of these men since the - - what you call the accident?

A. No, I haven't.

MR. BERRIGAN: Thank you very much, Deonta. I don't have any more questions. Mr. H[illegible] might want to ask you some questions.

MR. HALL: Deonta, thank you very much for coming in today.

THE REPORTER: Are you waiving signature on this deposition?

MR. HALL: Yes.

THE REPORTER: Are you ordering copies of the transcripts, Mr. Hall?

MR. HALL: Yes.

(The witness was excused.)

IN THE CIRCUIT COURT OF JACKSON COUNTY
MISSOURI
AT KANSAS CITY

STATE OF MISSOURI,	)	CR87-1997
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
ROGER BUCKNER,	)	Sept. 15, 1988
	)	
Defendant.	)	

THE DEPOSITION OF THE WITNESS
RAYMOND KINNEY

produced, sworn and examined, between the hours of 8 a.m. and 6 p.m. of September 15, 1988, at the Office of the Public Defender, 10th Floor Jackson County Courthouse, 415 East 12th Street, Kansas City, Jackson County, Missouri, before

PHYLLIS M MAIER, CSR
Registered Professional Reporter

a notary public in and for the State of Missouri, in the above-entitled cause; taken on behalf of the defendant.

APPEARANCES

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I N D E X

Witness: RAYMOND KINNEY Page:

Direct Examination by MS. SCHENKENBERG 3

E X H I B I T S

(None Marked)

- - - - - - - -

TRANSCRIPT COPY

MR. HALL MS. SCHENKENBERG

- - - - - - - -

SIGNATURE

The witness's signature to his deposition is waived.

RAYMOND KINNEY

a minor, being produced, sworn and examined on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MS. SCHENKENBERG:

Q. Raymond, as Mr. Hall has just told you, my name is Barbara Schenkenberg, and I'm a lawyer, and I'm going to be asking you some questions here today. Okay?

A. Okay.

Q. I'm sure Mr. Hall has talked to you some about what's going to happen, but I'm going to go over it again.

First of all, I can see you're real interested in this machine right here (indicating), and what's going on is Ms. Maier here has the ability, she can actually write down everything that's said just while we're saying it, and then she's going to type it all up so we can read it later. Okay?

A. Okay.

Q. And what that means is that whenever I ask you a question or you would ask me a question, we'd have to answer out loud so she could write it down, because she couldn't write down like if you shrugged your shoulders or shake your head or something like that. Okay?

A. Okay.

Q. So you promise that you'll answer everything out loud?

A. Yes.

Q. Let me say a few things to you before we get started here. I know this is hard for you to answer a lot of questions like this, and it happened some time ago. There aren't any right or wrong answers here. This isn't like a test in school or anything. All we want to know is what you remember about

what happened that night that your mama got hurt. Okay?

A. Okay.

Q. And sometimes if I ask you a question you don't understand, or if you want some more information or you have a question you want to ask me, you just feel like you can do that. Okay?

A. Okay.

Q. Although this looks kind of formal and I know you're in a strange place, you shouldn't be nervous and shouldn't worry about saying the wrong thing. Okay?

A. Okay.

Q. A little hesitant there, but I think we'll get better.

And do you promise me that if you don't understand a question that you'll tell me that rather than try to make up an answer or just go ahead and not understand it? Do you promise you'll tell me if you don't understand any questions?

A. Yeah.

Q. Now, we have to do a silly thing first. I have to ask you for the record, so Phyllis, here, can write it down, what your name is.

A. Raymond Kinney.

Q. How old are you, Raymond?

A. Nine.

Q. What school do you go to?

A. Warford Elementary.

Q. What grade are you in?

A. Fourth.

Q. Do you know what your teacher's name is?

A. Miss Shippee.

Q. Does she teach all the time or do you have different teachers?

A. She teaches me all the time.

Q. How many kids are in your class?

A. 27, I think.

Q. What's your favorite subject in school?

A. PE.

Q. Who is your best friend there in school?

A. Fred - - Fred - - I don't know his last name.

Q. Do you and Fred play around together?

A. Yeah.

Q. What's your favorite thing that you do with Fred?

A. Play kickball.

Q. Before we get started, do you have any questions for me?

A. No.

Q. You remember the night that your mama got hurt and Don Wright got hurt and his friend got hurt?

A. Yes.

Q. And you've talked to Mr. Hall about that?

A. Yeah.

Q. That was last night, and maybe a little bit today?

A. What do you mean by that?

Q. Did you talk to him last night about it?

A. Yes.

Q. Do you remember quite some time ago talking to the police about it?

A. Yes.

Q. Going down to the police station down here (indicating)?

A. Yes.

Q. Now, do you remember what day of the week it was that this happened?

A. No.

Q. Do you remember whether you went to school that day?

A. Yes.

Q. So it was a school day. At least we know that much, hmm?

A. Yeah.

Q. What school were you going to then?

A. It was called Kumpf.

Q. Huff?

A. Kumpf.

Q. Kumpf. Okay. Now, your brother, is he in the same grade as you or older?

A. He's older.

Q. Is he a year - - a grade older than you?

A. Yeah.

Q. When you got out of school that day, who picked you up from school?

A. Nobody. I walked over to my uncle's.

Q. So you walked alone to your uncle's?

A. No, with my brother.

Q. What's your brother's name?

A. Deonta Kinney.

Q. Do you have any other brothers and sisters?

A. No.

Q. So when you got out of school, you and Deonta walked over to your uncle's house?

A. Yes.

Q. Do you know what your uncle's whole name is?

A. (The witness nodded.)

Q. Who's that?

A. Bam Kinney.

Q. How far was it from your school to your uncle's house?

A. Just a block away.

Q. Do you remember where your uncle was living then?

A. Yes.

Q. Where was that?

A. He was living around the corner from the school.

Q. Do you know the address?

A. No.

Q. Do you have any idea - - what time did you get out of school that day?

A. I don't know that.

Q. Was it regular time? You didn't get out early or late?

A. One time we got out early.

Q. But unless I tell you difference, all my questions are going to be about this particular day, this day. Okay?

A. (The witness nodded.)

Q. On this day, do you remember whether you got out early or late?

A. We didn't get out early.

Q. So it was probably regular time?

A. Yes.

Q. Who was at your uncle's house when you got there?

A. There was just him, his wife, and his two children. That's it.

Q. So that would be your Uncle Bam and his wife and her two children?

A. Yes.

Q. Do you know your Uncle Bam's wife's name?

A. Gwen.

Q. Gwen. Do you know her last name?

A. No.

Q. Do you know her kids' names?

A. I know one of them.

Q. What's that?

A. The boy's is Ronnie.

Q. Are they about your age or were they younger or older?

A. Younger.

Q. A lot younger?

A. Yeah.

Q. Too young to play with, really?

A. No.

Q. When you got to your Uncle Bam's house, what did you do?

A. We went up to the park, and I played with my brother. And then Ronnie came up and so we started playing with him, and then we started playing in the sand.

Then it was nighttime, so we went back home. We went back down to Bam's.

Q. Let me stop you for just a second. How is it that you knew to go to Uncle Bam's house?

A. Our mom told us to go there in the morning.

Q. Before you left for school, she said - -

A. Yeah.

Q. - -Kids, go, after school, to Uncle Bam's house?

A. Yeah.

Q. When you got there, your mom wasn't there, though?

A. No.

Q. And neither was Don Wright?

A. No.

Q. And so it was still light, wasn't it, when you got to Uncle Bam's house?

A. Yes.

Q. So you went up to the park and played around until about dark-time?

A. Yeah.

Q. And then you went back to Uncle Bam's house?

A. Yeah.

Q. Then what did you do?

Let me give you a different question. When you got to Uncle Bam's house, who was there, when you got back from

the park?

A. There was - - our mom was there, and this man and his lady was there. They had a big bag of white powder, and they were selling it to these other people, but I didn't know them.

Q. Was Don Wright there?

A. No. He was coming there, looking for my mom.

Q. Did you know the man that was there, the man and the lady that were there with your mom?

A. No.

Q. Was it the same man who later went home with you or was it somebody different?

A. Somebody different.

Q. And did you go home from playing in the park just about the time it got dark or later or- -

A. About the time- -when it was about to turn dark.

Q. So you didn't stay in the park a long time after it got dark?

A. No.

Q. What did you do when you got back to Uncle Bam's house?

A. We watched TV and just played around, really.

Q. Was Uncle Bam's wife's mother there? Do you know

Dorothy, was she there?

A. No, she was at her house. She lives next- - right next to Bam.

Q. And was it your mom who was selling this white powder?

A. (No response.)

Q. Was she selling it with these other folks, or you said they were selling it, so- -

A. No, they were selling it.

Q. Had you ever seen these other people before?

A. No.

Q. Did you have dinner at all?

A. Huh-uh.

Q. Is that a No?

A. No.

Q. What happened after- -can you tell me, go on, then. So you're watching TV, and then what' s the next thing you remember happening?

A. Our mom came in. And then she was asking where were Deonta and Raymond. So we came, and they said, Come on, we're going home. And then we were about to go home.

Then we stayed there for a little bit. And then Don came

and said, Where is Mickey? And then Bam went to the door, and he said, She's not here. And he said, I know she's in there. And she just walked out the door and said, Come on, guys. So we walked up the street, and Don follows us.

And then we got home- -

Q. Who said, Where is Mickey?

A. Don.

Q. Do you know who Mickey is?

A. Yeah. She's my mom.

Q. Oh, that's what he calls your mom?

A. (The witness nodded.)

Q. You said that you heard Don say, I know she's in there?

A. Yeah.

Q. Was Don having some trouble - - did Bam not want him to come in?

A. Yeah.

Q. Bam didn't want him to come in?

A. Yeah, he didn't want her to come in.

Q. He didn't want Don to come in?

A. Yeah.

Q. Did Don come inside of Bam's house?

A. No - - our mom went out.

Q. While you were watching TV, before Don came to Bam's house, did anybody else come to Bam's house?

A. Yeah, some people buying the powder.

Q. Were they any people that you knew?

A. No.

Q. Were any of those people the same people that ended up going home with you?

A. No, they didn't go home.

Q. Who was going to the door when these people would come to buy power?

A. Bam.

No, what do you mean by coming to the door?

Q. Who would answer the door, like if somebody knocked at the door, then who would go to the door?

A. Bam.

Q. And then these people would come in, and did they talk to Bam or your mother?

A. They would talk to Bam.

Q. And then what would happen?

A. And then the guy with the powder was selling some.

Q. So there was somebody else there with powder?

A. Yeah.

Q. Is this that man you were talking about a little while ago?

A. Yeah.

Q. And you don't know his name?

A. Huh-uh - - no.

Q. Do you remember what he looked like?

A. No.

Q. Was he tall, short, heavy, dark?

A. Kind of dark.

Q. Did he talk with an accent of any kind?

A. I can't remember that.

Q. Do you know a man named Ernest Black?

A. No.

Q. Later on, did you go home and did some people go home with you and your mom and Don?

A. No.

Q. Besides the people that came to buy the powder, did

anybody else come to Bam's house?

A. No. Just one person, yeah.

Q. Who was that?

A. That was Gwen's mother.

Q. Did she come there?

A. Yeah.

Q. Did she stay there?

A. Yeah, for a little while.

Q. When you left Bam's house, did you drive or walk?

A. Walk.

Q. Where did you walk to?

A. Back to our house.

Q. Who all walked back to your house?

A. Just Don, my mom, Deonta, and me.

Q. And no one else was with you?

A. No.

Q. Do you have any idea how long you were there watching TV before you went home?

A. No.

Q. Did you watch a couple of shows?

A. A couple of shows.

Q. Do you remember whether those were long, maybe detective or cowboy shows, or were they short comedy- - shows where they made a lot of jokes?

A. Comedy shows.

Q. So you watched a couple of those kind of shows?

A. Yeah.

Q. Could you have watched maybe three or four of those kind of shows?

A. No. We only stayed there and watched two.

Q. And then you went home, to your house?

A. Yeah.

Q. Do you remember where you were living then?

A. You mean the address and all?

Q. Yes.

A. No.

Q. Let me ask you - - and don't think that you're doing anything wrong, but I'm going to ask you a question. What's your address now where you're living?

A. 1108 - - I don't really know. I don't look at it all the time.

Q. Is it in Kansas City?

A. Yeah.

Q. It is in Grandview, by any chance?

A. Yeah, you could say that.

Q. Do you know what city you live in?

If you don't know, that's okay, too.

A. I don't know.

Q. So after you walked back to 4201 Prospect, where you were living then, did you go straight home from Bam 's house?

A. Go straight home to about Bam's house?

Q. Did you walk straight from Bam's house to your house with your mother?

A. Yeah.

Q. Did you stop anywhere and eat or have anything to drink?

A. No.

Q. What did you do when you got back to your house?

A. I did my homework. Then I watched TV. And then our mom told us to go to bed.

Q. Who all was there while you were doing your homework and watching TV?

A. Watching TV - - just us four.

Q. Now, back at - - I hate to do this to you. I forgot to ask you a question, though. I' ll let you think about it for a second.

Back at Bam's house, did you see anybody smoking anything out of a pipe?

A. Yeah.

Q. Who was that?

A. It was a lady, and the one man that was selling it.

Q. Who was the woman that was selling it?

A. I don't know her.

Q. Was it Bam's wife?

A. No.

Q. Was it Dorothy, Bam's wife's mother?

A. No.

Q. Did you see anybody else smoke anything out of a pipe?

A. No. Just them - - no - - yeah. There was two more people, but I don't know them either. They were there just smoking and all that around this one table.

Q. Did you see anybody else?

A. No. Just the people that were selling it.

Q. Did you ever see your mother smoke anything out of a pipe?

A. Yes.

Q. And was that at Uncle Bam's house?

A. Yeah.

Q. Did you see your Uncle Bam smoke anything out of a pipe?

A. Yes.

Q. And what you're telling us is that Don never came in Uncle Bam's house?

A. Huh-uh.

Q. So this may sound sill, but did you see him smoke anything out of a pipe at Uncle Bam's house?

A. No, he never did come in most of the time. He never did want to come in.

Q. That day, you mean?

A. Yeah.

Q. So now let's jump forward a second. So then you went on home and you were home doing your homework and watching TV and stuff, and you say it was just you and your

mom and Deonta and Don Wright there at your house; is that right?

A. Yes.

Q. And after you did your homework and watched TV, then what happened?

A. Our mom told us to go to bed.

Q. Did you see your mom smoking anything out of a pipe or smoking a pipe of any kind when you were at your house?

A. No. She was watching TV, too.

Q. How about Don, did you see him smoking a pipe or anything out of a pipe at your house?

A. Yeah. He was in the frontroom.

Q. And he was doing that in the frontroom?

A. Yeah.

Q. Was anyone with him when he was doing that?

A. No. Just him.

Q. You look like you were going to add something. Were you going to - -

A. No.

Q. So then you watched TV, and then your mom says It's time to go to bed. Do you have any idea what time - - well, what time was your usual bedtime then or did you have a usual

bedtime.

A. Yeah. It was around 9 o'clock.

Q. Was it your usual bedtime or was it later that you went to bed that night.

A. It was our usual.

Q. Do you have any idea what TV show you were watching before you went to bed?

A. No.

Q. Then your mom says, Go to bed, and so what did you do?

A. Went to bed.

Q. Which room were you sleeping in?

A. The one between the playroom and the bathroom.

Q. Was your bedroom close to the front of the house or the back of the house?

A. The front.

Q. And did it have a door that led into the frontroom?

A. Yeah.

Q. And then a door that led into what, the kitchen or the other bedroom?

A. The other frontroom. We have two frontrooms.

Q. So you went to bed. And you and Deonta slept in the same room?

A. Yeah.

Q. Am I saying his name right? Say your brother's name?

A. Deonta (de-on-tay).

Q. Did you go right to sleep or were you up for a while, playing around?

A. We went right to sleep.

Q. When you went to bed, was there any light on in your bedroom?

A. No.

Q. Was there any light on in the frontroom where Don was?

A. Yeah.

Q. And were you watching TV like in that - - the middle room, the room that led into the kitchen, or were you watching TV in the frontroom that led to the porch?

A. (Shaking head) the playroom.

Q. Where was the playroom, can you tell me where that was, which room you're calling the playroom?

A. Yeah, it was - - it was way in the back, and it had - - it was right next to the bathroom.

Q. So you went to bed, and you say you went right to sleep?

A. Yeah.

Q. When you went to bed, who was at your house?

A. Just us four.

Q. Just your mom and Don Wright and you and Deonta? -- is that right?

A. Yeah.

Q. After you left your Uncle Bam's and you went on home, while you were there watching TV and doing your homework did anybody come over to your house?

A. No.

Wait a minute. Just one person. It was a man, and a lady.

Q. Do you know who this man and lady were?

A. No.

Q. So they came over to your house. And did they stay or leave?

A. The lady left. The man took her back home. Then he came back.

Q. So he stayed there at your house?

A. Yeah.

Q. So he was still there, then, when you went to bed?

A. What do you mean by that?

Q. What?

A. What do you mean by that?

Q. Well, did you wake up during the night?

A. Yeah.

Q. And what was it that woke you up?

A. It was a loud boom on the floor.

Q. Could you tell where this came from?

A. It had to come from in the living room.

Q. Just so Phyllis can write it down here, what is your mother's name?

A. Carol Kinney.

Q. And what's Don's full name? - - do you know his whole name? Was it Don Wright.

A. Yeah.

Q. Do you remember what Don was wearing that night?

A. No.

Q. Do you remember what your mom was wearing that night?

A. No. Yeah, she was - - she changed into her robe. It was a red robe.

Q. Rat or red?

A. Red.

Q. R-e-d - -

A. Uh-huh.

Q. - - as in a color - - like this color (indicating)?

A. Yes.

Q. While you were at your house, before you went to bed, did anybody come over there to buy some powder?

A. No.

Q. Do you know why this man and the lady came over?

A. No.

Q. Did you hear any talk between the man and the lady and your mom or Don? Did you hear anything anybody said?

A. No, not really. I can't remember.

Q. When this man and lady came, did they go and sit with Don or did your mom leave you and go sit with them or what happened?

A. Can you say that over again?

Q. You said a man and lady came to your house while you

were there watching TV and doing your homework: is that right?

A. Yes.

Q. Because I don't want to put words in your mouth or anything. You remember that happening?

A. Yeah.

Q. Just sort of?

A. Yes, sort of.

Q. When this man and lady came, do you remember, did they come watch TV with you or what did they do?

A. They didn't come to watch TV with us.

Q. Do you remember what they did?

A. Yeah, they were just - - they went in the living room.

Q. And who was in the living room when they went in there?

A. It was Don, my mom, the man, and the lady.

Q. Do you remember what the man was wearing?

A. Yeah. He was all black.

Q. All black?

A. (The witness nodded.)

Q Do you remember what the lady was wearing?

A. No.

Q. And you say you'd never seen them before?

A. No, I didn't see them.

Q. And it was just those two people? Did anybody else come to your house?

A. Just those two people.

Q. So then you went to bed, and you say that you heard a big bank later on in the night; is that right?

A. Yes.

Q. And then what did you do?

A. Then I just started looking at that one guy with the Afro, he - - he was just staring at me then, because he thought I was asleep, and then he put his hand in the lamp that didn't have no light - - light bulb. And then I just watched - - just kept on looking at him.

And then I - - he left, and then when - - this man came in there with his gloves on and threw my mom on the couch, and then he left.

Then the one guy came back.

Q. The guy with the Afro?

A. Yeah. He came back, and he started going back and forth, back and forth.

Q. Back and forth between the rooms?

A. Yeah. And then Don - -

Q. Is this the man with the Afro or the man with the gloves?

A. The man with the Afro.

And one guy - - no, Don, he was in there hollering. Then I just heard somebody drop to the floor. And then I - - then I saw the one guy, the big chubby guy, take my mom - - the one with the gloves on - - take my mom and throw her against the TV.

Q. Let me stop you for just a second. Does the big chubby guy, does he have an Afro, or is this the third person?

A. This is the second person I was talking about, the one with the gloves.

Q. Let's stop for a second, and let me just ask you a couple of questions about what you just told me.

So you woke up, and you say when you woke up, was there someone in your room?

A. Yeah.

Q. And this man had an Afro?

A. Yes.

Q. Do you remember what kind of clothes he was wearing?

A. (Shaking head) I know that he was wearing a jacket, but I couldn't see what color it was.

Q. Did he have gloves on?

A. No.

Q. Did he have a hat on?

A. No.

Q. Did he say anything to you then?

A. No, not until he tied us up.
Q. And then he - - you say he left?

A. Yeah.

Q. And what did you do then?

A. Then - - wait a minute. I made a mistake.

Before I saw that man pick up my mom, I woke Deonta up. And then the one - - I said, Deonta, wake up, and he woke up and he said, What? And I said, Something's happening. And then he said, Big deal. And then he said - - and then he woke back up and said, Something's happening? And then he looked at me, and then this one guy came in and he saw that he picked up my mom and threw her against the TV, and then he started crying. And then the man came in and he hit him across his head.

Q. Deonta?

A. Yeah.

Q. Was you mom in the room at that time?

A. In the room that we were in?

Q. Yes.

A. No.

Q. When he threw her against the TV, was she already tied up or not?

A. She wasn't tied up - - yeah, she was tied up.

Q. Had you gone to the door and looked out of the door yet?

A. Huh-uh.

Q. So, then, after this happened, and then - - did the man leave or stay there? - -leave the room, I mean.

A. Which one?

Q. The guy with the Afro.

A. No. He wasn't there.

Q. Okay.

A. Then he came back with some rope and some towels. Then he tied us up and put something in our mouth.

Q. Let me stop you for just a second. How many men, all total, what did you see there? - -strange men there.

A. Yeah.

Q. How many did you see?

A. Three.

Q. Can you tell me now - -you've talked about a man with an Afro, and you said he had some kind of jacket on, but you don't remember the color?

A. I don't remember.

Q. And he did not have gloves on; is that right?

A. No.

Q. Do you remember anything else about this man with the Afro?

A. No.

Q. Then you said there was another man you've talked about as being chubby or fat?

A. Yeah.

Q. What kind of hair did he have, do you remember?

A. He had short hair. He was kind of tall. He had gloves on.

Q. Do you remember what color the gloves were?

A. Yeah. Brown.

Q. Do you remember anything else about what kind of clothes this chubby man had on?

A. No.

Q. Do you remember his jacket or anything like that?

A. Huh-uh - -no.

Q. Do you remember his shoes?

A. No.

Q. Then you say there was a third man that you saw there at your house?

A. Yeah.

Q. What can you tell me about what he looked like?

A. Short hair, mustache, a red jacket. And that's all I know.

Q. Do you know what a jerri curl is?

A. Yeah.

Q. Did any of these three men have jerri curls?

A. No.

Q. Did the man with the red jacket have on gloves?

A. I can't remember.

Q. The man with the red jacket, do you remember anything else about him, what he had on or - -

A. No.

Q. Did you hear any of these men talk at any time they were in your house?

A. I've forgot.

Q. Did you notice whether any of them had any kind of accents, like they sounded they were from someplace else?

A. Yeah.

Q. You did notice that?

A. Yeah, I noticed that they were talking kind of strange, like Jamaicans or something like that.

Q. Have you heard Jamaicans talk before around your neighborhood?

A. No. Well, Bam said something about they were Jamaicans, something like that.

Q. I'm sorry - -go ahead.

A. Something like that. He said something like that.

Q. So your Uncle Bam told you at some time that they were Jamaicans?

A. Yeah.

Q. Do you remember when it was that Uncle Bam told you that?

A. No – yeah, it was the time two men came over there with guns and a bagful of money and some powder.

Q. That was over to Uncle Bam's house or over to your mom's house?

A. Bam's.

Q. Was this before your mom got hurt or after your mom got hurt?

A. This was before.

Q. And at that time did you hear those men talk?

A. Yeah.

Q. And then your Uncle Bam told you they were Jamaicans?

A. No, he said something about Jamaicans.

Q. I don't want to put words in your mouth. But was there something about these three men at your house that night that reminded you of those men that your Uncle Bam told you were Jamaicans?

A. Yeah, because two of them I knew from - -from Bam's house.

Q. Two of them you'd seen at Bam's house?

A. Yeah.

Q. And they were the Jamaicans?

A. Yeah.

Q. Did you know their names?

A. One, the chubby guy, he goes by Ajax.

Q. And you're sure that this was the same guy that you saw at your house?

A. Yeah.

Q. Do you know any other name that he goes by besides Ajax?

A. No.

Q. And do I understand that right, that it's Ajax, like the soap, and not A.J., like two initials?

A. I don't really know. I don't know if it's Ajax or A.J.

Q. It sounds something like that, hmm?

A. But I really think it's A.J. or Ajax, one of those.

Q. Something like one of those names?

A. Yeah.

Q. But you don't have any - -you're sure that it was the same guy?

A. Yeah.

Q. And then which of the other two - -you said two of them you knew, that your Uncle Bam had told you that were Jamaicans?

A. Yeah.

Q. The chubby one was the one that was Ajax?

A. Yeah.

Q. Then which of the other two had you seen at your uncle's house, the guy with the short hair and a mustache or the guy with the red jacket? - -or wait. That's the same guy, isn't it?

A. The one with the Afro.

Q. That was the other guy you'd seen at your Uncle Bam's house?

A. Yeah.

Q. And your Uncle Bam had told you he was a Jamaican, or you'd heard him say that?

A. Yeah.

Q. And then as I understand this, what you're saying, had you ever seen the guy in the red jacket before?

A. No.

Q. So let's go back to what was happening then?

First of all, the guy in the red jacket, did you hear him talk at all?

A. No.

Q. Did you have any way of telling whether he had some kind of accent like a Jamaican, or sounded like he was from someplace else?

A. No. I never did hear him talk.

Q. So, then, let's go back to what was going on. So after you woke up and then they brought your mom in once and they threw her against the TV, then what's the next thing you remember happening? You'd already wakened Deonta. Did Deonta get up or did he stay in his bed?

A. He stayed in bed.

Q. And then what do you remember happening next?

A. After he got up or after I woke him up?

Q. Just start after - -you first woke up and then you saw your mom being thrown around. Then what was the next thing you know happened?

A. Not really. They just cut off the lights and left.

Q. Let me ask you some questions, th[illegible]. After you woke up and you knew that there was something going on, like you told Deonta, did you go to the door of your bedroom? Did you look out - -

A. No. I went over in the other door and looked - -peeked around the corner.

Q. So then you looked out into the frontroom, is that right?

A. Yeah.

Q. And that's also - - There are two rooms there, there's the one that leads to the porch, and then you had the kind of middle room where the couches were and stuff; is that right?

A. Yeah.

Q. When you looked out, could you see both of those rooms?

A. No.

Q. Which room could you see?

A. I could see the other room with the broken TV. It's the - -it's the other living room.

Q. Is that the room with the fireplace or without the fireplace?

A. Fireplace?

Q. Do you remember there was a fireplace there?

A. I don't remember a fireplace.
Q. Was it in the room with the windows, lots of windows?

A. Yeah, it was the room with the big window in front.

Q. And that was the room that looked out on 42nd Street? - -do you remember that? Or did the windows look out on the front porch?

A. The front porch.

Q. So that's the room you could see; is that right?

A. Yeah.

Q. When you looked out, what could you see?

A. I could see the man with the short hair and the red jacket holding up Don.

Q. Now, do you mean to - -the man with the short hair being the short Afro, or the guy with the red jacket had short hair?

A. Yeah.

Q. So you saw one guy, the guy with the red jacket, and he was holding up Don?

A. Yeah.

Q. What do you mean, holding him up?

A. By his shirt.

Q. Was Don laying down on the floor or was he standing up or - -

A. Standing up.

Q. And what else did you see?

A. I saw a man coming with a knife, so I jumped back into the bed.

Q. Which of these three men, if you remember, was the man coming with the knife?

A. It was the fat, chubby one.

Q. The fat, chubby one that you said was Ajax or A.J.?

A. Yeah.

Q. Did you see if any of these men had guns?

A. Yeah. The one with - -in the red jacket.

Q. Did he have a gun when he was holding Don Wright up or did you see that later?

A. I saw the gun later.

Q. So as I understand it so far, you went to the door and you looked out and you saw this man in the red jacket holding Don Wright up; is that right?

A. Yeah.

Q. And then you saw the man with the Afro coming with the knife?

A. (The witness nodded.)

Q. And so you jumped back in the room, right?

A. Yeah. I jumped back into bed.

Q. Into bed. Okay. Do you know where your mom was at that time, when you were looking out?

A. Yeah - -no - -no, I think she was in the frontroom. And then Ajax brought her in the other room with the TV.

Q. Was Don Wright tied up when you saw him being held up?

A. Yeah.

Q. Did you actually see anybody cut Don Wright?

A. Yeah.

Q. Did you see that before you jumped back into your bed or - -

A. Yeah.

Q. - -when was it that you saw it?

A. I saw it before I jumped back into the bed.

Q. So you saw this man, Ajax or A.J., coming toward Don Wright with the knife, is that - -

A. Yeah.

Q. Is he the one that cut Don Wright or somebody else?

A. He was the one who cut Don Wright.

Q. And at that time did you see where the man with the short hair and mustache was?

A. Yeah. He was right by the door.

Q. The front door or the door that you were at?

A. The front door.

Q. Then you jumped back into the bed?

A. Yeah.

Q. And what was the next thing that you saw happen? Did anyone else come into your room then or did you get up again or what happened next?

A. The one with the Afro came in.

Q. Came into your room?

A. Yeah.

Q. And what happened then?

A. Then he put his hand in the light bulb - -the one without the light bulb.

Q. You mentioned that earlier. Were you confused, then, and it really happened - -did he come in then and put his hand in the light bulb, that's when - -

A. Yeah - -I think he was searching for the powder.

Q. Do you know whether powder is ever kept in places like that?

A. No.

Q. Did you hear anything while you were either standing there at the door or going to - -or jumped in bed? - -I mean, did you hear anybody say anything or anybody call out?

A. I can't remember. Yeah, I - -when I woke up?

Q. Yes.

A. Yeah, I heard Don screaming and hollering.

Q. Do you know, was he saying words or was he just screaming?

A. Really, he was just screaming and hollering.

Q. Did you hear your mom screaming or hollering?

A. No

Q. So after you jumped back in bed and then the man with the Afro came in and looked around in the light, then what happened?

A. Then Ajax came in, and he had my mom by the hair and threw her into a chair.

Q. When you say the man with the hair, you're talking about the one with the Afro?

A. No, the big chubby one.

Q. Did the man - -the big chubby one have an Afro or not?

A. No, he didn't.

Q. He had what kind of hair?

A. Short.

Q. Short hair. Okay. Did he also have a mustache?

A. No.

Q. So Ajax, he's the guy, the chubby one, he came in and threw your mom - -he had your mom by her hair, you said?

A. Yeah.

Q. And then what did you see happen?

A. He just left.

Q. Did he just throw her down or leave her there?

A. Yeah, he left her in the chair.

Q. And then what happened?

A. I don't know after that. He - -then the one with the Afro just kept on looking between the halls.

And then I woke my brother up.

Q. Had you already woken your brother up once?

A. No. This is the first time I woke him up.

Q. Go ahead.

A. And then I woke him up and said, Deonta, something is going on. Then he was about to go back to sleep. You know, I shook him again and said, Something is going on. And then he said, What? What? And then he said that twice. And then he - -then he stayed up and was looking around, he was in the corner of the bed - -no, I was in the corner of the bed.

Q. Did you wake Deonta up before you saw Don Wright get cut or after?

A. After.

Q. And then you two stayed on the bed?

A. Yeah.

Q. Was your mom in the room by that time?

A. In the playroom.

Q. In the playroom. Was she in the room you were in?

A. No.

Q. Okay. She was in a different room. Then what did you see happen?

A. Then me and my brother was watching for a little while. And then Ajax came and picked up my mom and threw her against the TV, and Deonta started screaming and hollering. And then Ajax came in and he hit Deonta up aside his head twice and told him to be quiet and then he had a big knot on his head.

Then one guy looked between the halls. Then - -

Q. Which guy was looking? Was that the guy with the Afro or- -

A. Yeah.

Q. Okay. Go ahead.

A. And then he came back and tied me and my brother up. And the next thing - -and then he stuffed something in our mouth.

The only thing I know, they just cut off the lights and left.

Q. Before they left and before you were tied up, did you see anything happen to the man that was there visiting your mom? Did you see him get cut at all?

A. No. He got hit against the head with a gun.

Q. You saw that happen?

A. Yeah.

Q. Did you see which of the three men did that? - -if you remember.

A. No.

Q. You don't remember, or you didn't see?

A. I didn't really see it, I just - -he just had a big know on his head.

Q. Did you see anything happen to your mom? Did you see anybody cut your mom?

A. Yeah.

Q. When was that - -

A. No, I didn't see her. But she had a cut on her neck.

Q. She got cut, that's for sure. But did you see it happen?

A. No.

Q. So do you know which man did it?

A. No.

Q. So the only cutting you saw was Don; is that right?

A. Yeah.

Q. After they cut off the lights and left, then what did you do?

A. Hopped into the bathroom and we saw a knife, so we cut ourself loose. Then my brother went in there and looked at mom, and he said, I'll be right back. So he ran down to the store. We - -me and my brother sleep in our clothes, we don't sleep in our pajamas.

So he run down to the store where the pay phones are and he dialed operator, and the hospital, and the police.

And he came back and told my mom to put a towel on her neck - -a wet towel on her neck. And she didn't want to, because it would hurt.

So then the police - - No, my brother cut on the light in the other room, and this one guy got up and said, cut them back off. And then he cut them off, and the police came.

Q. Who was it that said, cut them back off, was that the guy that was there visiting your mom and Don Wright?

A. Yeah.

Q. Did you ever hear anybody talk about going over to 5030 Woodland? Did you hear the man say anything about - -the man who was visiting there, or did you hear any of these three men say anything about 5030 Woodland?

A. No.

Q. Was it you that cut the rope off your mom, or was it Deonta?

A. It was Deonta.

Q. And then it was Deonta who ran and called the police?

A. Yeah.

Q. This knife that you used to cut your ropes, you say you got it out of the bathroom?

A. Yeah.

Q. Had it been in the bathroom before you to bed, do you know?

A. No, it wasn't.

Q. Did you notice whether this knife had any blood on it?

A. Yeah, it had some blood on it.

Q. When was it that you noticed that it had blood on it?

A. It was on the blade. It was when me and my brother hopped in the bathroom.

Q. Did you use that knife to cut the tapes off your mama or did you use a different knife?

A. The same knife.

Q. Did you see any cars come to your house that evening or leave from your house, anybody come in cars?

A. Yeah.

Q. What kind of car did you see?

A. No, I didn't see any cars, but I think the one man that came to our house had a car.

Q. So you just - -did you hear it, maybe?

A. No.

Q. What about these three men that came to your house, you didn't see how they left, did you?

A. No.

Q. And you said that Ajax had gloves on and the guy with the Afro had gloves on?

A. Yes - -no, the guy with the Afro didn't have gloves on.

Q. So Ajax and the guy with the red jacket had gloves on?

A. No.

Q. Tell me again, then.

A. The guy with the red jacket on didn't have gloves, it was only Ajax.

Q. Only Ajax. Okay.

(Discussion was had off the record.)

Q. (By Ms. Schenkenberg) Let me just ask you one more question - -one or two more.

You said that you knew Ajax's name - -you knew Ajax and he was chubby, right?

A. Yeah.

Q. And then the guy with the Afro was the other one that you'd seen over to your uncle's house; is that right?

A. Yeah.

Q. Did you know his name?

A. No.

Q. Had you ever heard him called anything?

A. No.

MS. SCHENKENBERG: That's all I have.

MR. BERRIGAN: Do you have any questions, Mr. Hall?

MR. HALL: Thank you very much. We appreciate you coming down. Okay?

THE REPORTER: Do you want to waive signature on this?

MR. HALL: Yes. (Wit.excsd.)

(The witness's signature was waived.)

NOTARIAL CERTIFICATE

STATE OF MISSOURI)
COUNTY OF JACKSON)ss.

I, PHYLLIS M. MAIER, CSR, Registered Professional Reporter, a Notary Public in and for the State of Missouri, hereby certify that there came before me on the day, between the hours and at the place set forth in the caption page hereof, witness:

RAYMOND KINNEY

who was by me first duly sworn; that the witness was examined and the examination was taken down in machine shorthand by me and thereafter transcribed as set forth in the preceding 51 typewritten pages.

I further certify that it was agreed by counsel and the

witness that the signature of the witness to this deposition was expressly waived and that said deposition is now herewith returned.

I further certify that I am not counsel, attorney or relative of either party of the attorney for either party or otherwise interested in the event of this suit.

Witness my hand and notarial seal at Kansas City, Jackson County, Missouri, on September 27, 1988.
My commission expires February 11, 1992.

_____

Notary Public, State of Missouri
(Commissioned in Jackson County)

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LEAMON WHITE,	)	
	)	
Appellee/Petitioner,	)	
	)	
vs.	)	No. 04-2772
	)	
DON ROPER,	)	
	)	
Appellant/Respondent	)	

PETITION FOR REHEARING WITH SUGGESTIONS FOR REHEARING EN BANC

Respondent disagrees, of course, with the specific impact of the panel's decision on this case. The panel decided it in a manner that deviates substantially from the standard set forth in the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). But of greater concern is the impact of the panel's ruling on criminal cases, specifically on the role of defense counsel. By announcing a new standard for ineffective assistance of counsel, the panel would dramatically change the burdens imposed on criminal defense counsel, significantly increasing the cost of defense or significantly increasing the number of instances in which counsel is ineffective – or both. Respondent asks the panel and the court en banc to reconsider the ruling - - but at minimum, Respondent asks the panel and the Court to modify the holding so as to avoid the extensive impact that the panel's decision could have.

In the court's August 2, 2005, decision, the court granted habeas relief to petitioner because it felt that his Sixth and Fourteenth Amendment rights were violated because he received ineffective assistance of trial counsel. The panel

acknowledged that Raymond Kinney testified at petitioner's trial, but found counsel ineffective because his brother, Deonta, did not testify (Panel Opinion, pages 4-5). The court also found counsel was ineffective for declining to call Dorothy Merrell.

Under petitioner's theory of relief, Merrell would have testified that she did not see petitioner with Buckner hours before the murder, but Merrell did see Buckner with A.J. Constantine (Panel Opinion, page 3). Deonta may have testified that Constantine may have been another person at the house where the murder occurred (Panel Opinion, page 3). Neither factor, even if true, constitutes a breach of duty by trial counsel nor resulting prejudice under Strickland v. Washington, supra.

Merrell

Petitioner failed to show either a breach of duty or Strickland prejudice as to Dorothy Merrell. At her deposition, Merrell testified that Buckner and "A.J." came to her crack house "to kill us, because they' d known that we sold drugs" (Merrell Dep. Tr. 16). According to Merrell, they did not have drugs in the house at that time; thus, Buckner and "A.J." did not kill them (Merrell Depo. Tr. 16). Then, according to Merrell, the victim Don Wright volunteered that he had drugs to sell (Merrell Depo. Tr. 17-19). But Merrell knew he did not (Merrell Depo. Tr. 19). According to Merrell, Carol Kinney knew and told Don Wright that Don's statement would get them killed (Merrell Depo. Tr. 19-20). According to Merrell, Don Wright and Carol Kinney left and returned to their home (Merrell Depo. Tr. 22). According to Merrell, Buckner and A.J. left five to ten minutes later (Merrell Depo. Tr. 22-23). There should be no finding of ineffective assistance of counsel from this proposed testimony.

Initially, petitioner cannot show a breach of duty by trial

counsel. Petitioner does not overcome the strong presumption that trial counsel acted reasonably in declining to call Merrell to testify. Strickland v. Washington, 466 U.S. at 689; Bell v. Cone, 535 U.S. 685, 702 (2002). Trial counsel could reasonably decline to call Merrell because she did not view the assaults and murder of January 6, 1987. Trial counsel could reasonably decide not to call Dorothy Merrell due to her employment with illicit drug sales. Trial counsel could reasonably decide not to call Dorothy Merrell because her testimony did not make good sense. If her testimony were true, then Don Wright was deliberately placing himself in danger by selling drugs to Buckner and "A.J." Similarly, Carol Kinney was placing herself and her two children in danger by leaving the house with Don Wright. The testimony was no intuitive, and trial counsel could reasonably determine not to call Merrell.

The premise of the panel's decision was that trial counsel's investigation was too superficial to discover Merrell's testimony (Panel Opinion, page 5). Nothing about Merrell's testimony directly countered the state's evidence in that the Merrell testimony concerned events that occurred hours before the assaults and murder. See Rompilla v. Beard, No. 04-5462, slip op. at 4 (U.S. June 20, 2005). Indeed, as to both elements under Strickland, whether there was a breach of duty and resulting prejudice, the proposed testimony of Merrell concerned events even the panel described as "earlier on the night of the murder" (Panel Opinion, page 3). Such testimony by Merrell concerning a drug transaction hours before the assaults and murder are not even admissible under Missouri state law. Merrell's testimony would not demonstrate that "A.J." committed the murder or that petitioner did not. Merrell did not have testimony directly connecting "A.J." with the murder; thus, the testimony would have been inadmissible. See Evans v. State, 85 S.W.3d 750 (Mo. App. E.D. 2002). Under Missouri law, there must be proof that some other person committed some act directly connecting him with the crime,

State v. Meyers, 997 S.W.2d 26 (Mo. App. S.D. 1999); Helmig v. State, 42 S.W.3d 658 (Mo. App. E.D. 2001), and Merrell provides no such evidence. Petitioner cannot demonstrate that he received ineffective assistance of counsel from the failure to investigate or introduce inadmissible evidence. See Wood v. Bartholomew, 516 U.S. 1 (1995) (inadmissible evidence not material under Brady).

Deonta Kinney

The analysis of the panel as to Deonta Kinney is also outside the proper Strickland analysis. As noted, Deonta Kinney was a son of assault victim Carol Kinney. As noted by the panel, Deonta's brother, Raymond, testified as petitioner's trial for the defense (Tr. 998). Raymond, a ten year old student, was in the house where the murder of Don Wright occurred (Tr. 998-99). Raymond heard the voices of the men present (Tr. 999). One of the voices had a Jamaican accent (Tr. 999). Petitioner was not the man with the Jamaican accent at the house (Tr. 1000). The district court found that counsel was aware of the brother, Deonta, from the police report (Memorandum, page 14 citing Hearing Tr. 85, 89). Trial counsel did not call Deonta to testify at the guilt phase (Tr. 998). Under Strickland, that decision is strongly presumed to be reasonable and should not be the basis for the finding of ineffective assistance of counsel. 446 U.S. at 689; Bell v. Cone, 535 U.S. at 702. at the evidentiary hearing before the district court, petitioner did not present Deonta to testify about what he would have testified had he been called at petitioner's trial. Given this omission, petitioner can show neither a breach of duty nor resulting prejudice as to Deonta.

The panel opinion echoed the district court's conclusion that it was inexplicable why Deonta was not called to testify when Raymond had already been called (Panel Opinion, page 5). Of course, as noted by the panel, trial counsel passed away

1996 before the 2004 federal evidentiary hearing (Panel Opinion, page 4). Several reasons, however, come to mind for counsel not to call Deonta. Raymond testified "well" at the guilt phase (Tr. 998); thus, there was no reason to risk calling Deonta. Perhaps intangibles such as eye contact and demeanor counseled in favor of calling Raymond instead of Deonta at the guilt phase. Or Deonta could not testify that petitioner was not involved in the murder. These would be good reasons not to call Deonta.

The panel's finding of breach of duty and resulting prejudice is based on the assumption that Deonta would have testified at petitioner's trial the same as he testified at co-defendant Buckner's trial (Panel Opinion, page 3). The assumption is not self-proving, and petitioner presented no evidence to support this assumption before the district court. Deonta did not testify at the federal court's evidentiary hearing. Deonta's testimony is not exculpatory. Deonta testified that he did not see his mother being stabbed (Buckner Tr. 801). While Deonta identified "A.J." as being in the house (Buckner Tr. 800), this testimony did not exclude petitioner as being one of the perpetrators.

From a practical perspective, the panel decision seems to place on defense counsel the duty to attend the co-defendant's trial, in this case, the Buckner trial (Panel Opinion, pages 3, 4). In contrast, the Strickland court made clear that there were no absolute constitutional duties by trial counsel. It does not seem reasonable to impose on all defense counsel in the circuit the duty to attend all co-defendant's state and federal trials for however long they may last. Such a constitutional duty also creates the question of whether there is a constitutional duty to request to be the last trial so that all co-defendant trials can be observed first. Instead, as Strickland requires, trial counsel is to perform reasonably, an issue that requires subtle analysis given the nature of the crime scene. See Rompilla v. Beard, slip

op. at 10, n.4. And in this, trial counsel did. Rehearing or rehearing en banc is warranted in this case.

WHEREFORE, for the reasons herein stated, respondent repays that the Court grant his motion for rehearing, or in the alternative, for rehearing en banc.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

/s/
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was faxed, this 16th day of August, 2005, to:

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/s/
Stephen D. Hawke
Assistant Attorney General

PORTION OF TRANSCRIPT OF TRIAL OF RESPONDENT (February 6, 1989)

LEAMON WHITE,

previously duly sworn, testified further as follows:

EXAMINATION by Mr. O'Connor:

Q. State your name, please, for the record.

A. Leamon White.

Q. And you're the defendant in this case?

A. Yes, sir.

Q. And you're on trial before the jury now for first degree murder in which the State is asking for the death penalty?

A. Yes, sir.

Q. And you've sat here through the entire trial, is that true?

A. Yes.

Q. Now, you understand that we're going to enter into the stipulation that was just - - that you just read about your dental records, and then we're going to rest. Did you hear the judge say that, and me agree?

A. Yes.

Q. You understand that you as a defendant, like any defendant in any case, has the right to testify in his own behalf, do you understand that?

A. Yes.

Q. And you understand that the right to testify is the sole decision to be made by the person who's in charge of the person on trial which is in this case you?

A. Yes.

Q. And you can listen to Mr. Duncan and I as to whatever advice we give you pro and con on whether or not we believe you should or should not testify, and we're entitled to do that by law. But it is your decision and your decision alone on whether or not you want to take the stand and testify in your own behalf. Do you understand that?

A. Yes.

Q. Now, Mr. Duncan and I have discussed with you whether or not you're going to testify in this case. Is that true?

A. Yes.

Q. And we told you, did we not, that it was our collective opinion that you should not testify. Is that correct?

A. Yes. Yes.

Q. And we based that partly on, a great deal on, I guess, your prior criminal record. Is that true?

A. Yes.

Q. And you have several prior felony convictions?

A. Yes.

Q. And you understand that it would be proper scope of cross-examination for the prosecuting attorney to inquire about any prior felony or misdemeanor convictions that you had, do you understand that?

A. Yes.

Q. And that also that they could get a special instruction from the judge on the fact that you had prior convictions and that the jury could consider those prior convictions in determining whether or not they wanted to believe your testimony, do you understand that?

A. Yes.

Q. Now, you understand that those prior convictions could not be used in any way to suggest that since you committed those crimes that therefore you committed this crime, do you understand that?

A. Yes.

Q. In other words, the prosecutor could get up here and say, "Well, he's got all these convictions, he must have done this." They can't use those convictions other than to affect your credibility on whether or not the jury should believe your testimony. Do you understand that?

A. Yes.

Q. Now, what is your personal decision as to whether or not you are going to or you want to testify in this case?

A. Not testify.

Q. And is that something that you've thought about?

A. Yes.

Q. Do you understand your right to testify?

A. Yes.

Q. Now, from a tactical standpoint certain things happen during a trial where lawyers and the defendant make certain decision about witnesses, and have been made in this case, is that true?

A. Yes.

Q. And by saying that we're resting we are making a decision, Mr. Duncan and I, along with you, to not call Charles Ross of the Public Defender's Office, Ben Kinney, Laura Tyler, Clarence Gibson or Deonta Kinney, is that right?

A. Say that again.

Q. All right. Have we made the decision based on the way the testimony has gone in that we are not going to call Charles Ross, Ben Kinney, Laura Tyler, Clarence Gibson or Deonta, D-E-O-N-T-A, Kinney?

A. Yes I agree with that because you and Mr. Duncan suggested that.

Q. All right. And you understand that we went into the individual reasons why we suggested to you not to call these witnesses?

A. Yes.

Q. The pros and cons of what their testimony would be. Right?

A. Yes.

Q. And the fact that any of their testimony is subject to rebuttal from the prosecutor's office?

A. Yes.

Q. All right. And you understand that under the rules of discovery that the prosecutor wouldn't have to tell us what they had in rebuttal because rebuttal is just what it is, it's rebuttal, and until witnesses testify they do not have to provide the rebuttal evidence to you unless you were using the defense of alibi to where they had evidence that could refute your alibi, do you understand that?

A. Yes.

Q. After talking with Mr. Duncan and I, it's your decision, along with us, with our decision, not to call any of the witnesses I just previously named?

A. Yes.

Q. Now, you're charged with murder in the first degree. The lesser included offense of murder in the first degree is murder in the second degree. There could be an argument made by us, for you as the defendant, that the judge should instruct the jury on murder in the second degree because there is in my opinion an issue of whether or not the deliberation is there to support a conviction by a jury of murder in the first degree. Have we discussed that?

A. Yes, we discussed that.

Q. All right. Have we also discussed the fact that if we made an argument to the judge, and I think a good argument could be

made, that it's kind of up to the Court on whether or not the instruction is warranted under the evidence, than then the jury could compromise the verdict and not find you guilty of murder in the first degree but find you guilty of murder in the second degree because they kind of compromise out and find you guilty when otherwise they wouldn't find you guilty of the original charge? Have we talked about that?

A. Yes.

Q. Our feeling, collectively, as we've told you, is that we believe that we should submit on murder in the first degree only because the facts I think in a great extent support either a murder 1 or nothing against whoever committed these crimes.

A. Yes.

Q. Now, do you want us to request the judge and make an argument on your behalf for a murder in the second degree instruction?

A. No.

Q. Now, murder in the second degree, the punishment is 10 to 30 years or life imprisonment. Do you understand that?

A. Yes.

Q. And right now you're sitting with either life with no parole or the death penalty if found guilty. Do you understand that?

A. Yes.

Q. So if we submitted murder in the second degree, even if the jury found you guilty you would still have a chance at some dy in your life to get out of jail. Under this other circumstance you

will never get out of jail if convicted.

A. I understand.

Q. And it is your decision that we submit on murder in the first degree and not request the Court to submit the lesser included of murder in the second degree?

A. Yes.

KANSAS CITY, MISSOURI POLICE DEPARTMENT
INVESTIGATIVE REPORT (CASE DOCUMENT)

Case # SUPP 87-002063

Title of Investigation Subject of Report

HOMICIDE: INTERVIEW:

WRIGHT, DON, RAYMOND L.
B/M, 11-8-58KINNEY, B/M, 10-26-78

4201 Prospect DEONTA D. KINNEY,
B/M, 9-10-77

Report By: DET. LEE FLOYD
Assignment: Homicide Unit
Date:1-6-87Page1 of 2 Pages

On 1-6-87, at approximately 0628 hours, Detective Lee Floyd and Detective David Ray responded to 4201 Prospect, on a cutting. Upon arrival it was learned that RAYMOND and DEONTA KINNEY (CAROL KINNEY's sons) had been in the residence when the offense occurred. At 0702 hours Detective Floyd accompanied the juveniles to police headquarters in Police Officer Gabriella Pfeifer's (Radio 334) vehicle. En route to headquarters the children were brought milk, orange juice, cookies and pancakes, in an attempt to place them at ease. The children were interviewed and a video statement was obtained ay approximately 0840 hours. DEONTA KINNEY had been struck in the head by one of the suspects and was shy and scared. The video statement was taken with both juveniles present because they did not want to be left by themselves.

In the interview, prior to, during and after the statement, RAYMOND KINNEY stated that there were three suspects, one wearing a red jacket, one a black jacket and yellow gloves and one with a black jacket, possibly with black gloves. The man in the red jacket had a black gun. One of the men was described as fat. One of the men was described as having a jerry curl. The man in the red jacket "talked funny." The man in the black jacket was described as a Jamaican by RAYMOND KINNEY although RAYMOND could not say why he believed this man was a Jamaican.

They stated they did not see a suspect vehicle.

The children later separately viewed a photo line-up including a picture of ROGER BUCKNER, KCPD #163737. Neither child identified BUCKNER as a suspect.

DEONTA KINNEY identified a photograph of a black male known to him as "AJAX" or "A.J.", CHRISTOPHER CONSTANTINE, BM, 11-15-61. This photo was among a group of photos of known drug users.

DEONTA KINNEY stated that he had seen A.J. at his uncle BAM's (BENJAMIN KINNEY's) house on previous occasions.

RAYMOND KINNEY stated after the video statement that he believed the address 5030 Woodland was 53rd and Woodland.

The children were released to their grandfather,

HAROLD KINNEY, 11018 Wabash, 942-3455.

CONTINUATION

Case # Supp #87-002063
Date 1-6-87

The four photos shown to the children in a photo line-up were maintained by DET. CLARENCE GIBSON for investigative use.

At 0930 hours, PO JAN HOWARD, radio #224, stated she had checked for a residence at 5030 Woodland and there was no such address.

Both of the children were of the opinion that DON WRIGHT's friend (ERNEST BLACK) and DON WRIGHT knew the three suspects.

dm/ jlc

Missouri Supreme Court Rule 29.15 of the Rules of Criminal Procedure

RULE 29.15 CONVICTION AFTER TRIAL – CORRECTION

(a) Nature of Remedy – Rules of Civil Procedure Apply. A person convicted of a felony after trial claiming that the conviction or sentence imposed violate the constitution and laws of this state or the constitution of the United States, that the court imposing the sentence was without jurisdiction to do so, or that the sentence imposed was in excess of the maximum sentence authorized by law may seek relief in the sentencing court pursuant to the provisions of this Rule 29.15. This Rule 29.15 provides the exclusive procedure by which such person may seek relief in the sentencing court for the claims enumerated. The procedure before the trial court is governed by the Rules of Civil Procedure insofar as applicable.

(b) Form of Motion – Time to File – Cost Deposit Not Required – Notice of Filing, to Whom–Failure to File–Effect of. A person seeking relief pursuant to this Rule 29.15 shall file a motion to vacate, set aside or correct the judgment or sentence substantially in the form of Criminal Procedure Form 40. If an appeal of the judgment sought to be vacated, set aside or corrected was taken, the motion shall be filed within thirty days after the filing of the transcript in the appeal pursuant to Rule 30.04. If no appeal of such judgment was taken, the motion shall be filed within ninety days of the date the person is delivered to the custody of the department of corrections. No cost deposit shall be required. Movant shall give notice of the filing of the motion to any court in which the appeal of the judgment of conviction is pending. Failure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15.

(c) Clerks Duties. Movant shall file this motion and two copies thereof with the clerk of the trial court. The clerk shall immediately deliver a copy of the motion to the prosecutor. Upon receipt of the motion, the clerk shall notify the sentencing judge.

(d) Contents of Motion. The motion to vacate shall include every ground known to the movant for vacating, setting aside, or correcting the judgment or sentence. The movant shall verify the motion, declaring that he has listed all grounds for relief known to him and acknowledging his understanding that he waives any ground for relief known to him that is not listed in the motion.

(e) Pro Se Motion - Appointment of Counsel - Amended Motion, Required When–Withdrawal of Appointed Counsel. When an indigent movant files a pro se motion, the court shall cause counsel to be appointed for the movant. Counsel shall ascertain whether sufficient facts supporting the grounds are asserted in the motion and whether the movant has included all claims known to him as a basis for attacking the judgment and sentence. If the motion does not assert sufficient facts or include all claims known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and grounds. For good cause shown, appointed counsel may be permitted to withdraw. If appointed counsel is permitted to withdraw, the court shall cause new counsel to be appointed.

(f) Amended Motion - Form, Time for Filing - Response by Prosecutor. Any amended motion shall be verified by movant and shall be filed within thirty days of the date counsel is appointed or the entry of appearance by counsel that is not appointed. The court may extend the time for filing the amended motion for one additional period not to exceed thirty days. Any response to the motion by the prosecutor shall be filed within ten days after the date and amended motion is required to be filed.

(g) Request for Hearing, Time for Filing – Hearing, Not Required, When – Time Hearing to be Held. A request for a hearing shall be made by motion on or before the date an amended motion is required to be filed. Within fifteen days after the date an amended motion is required to be filed, the court shall determine whether to grant a hearing. If no request for hearing is timely filed or if the court shall determine the motion and the files and records of the case conclusively show that the movant is entitled to no relief, a hearing shall not be held. If a hearing is ordered, it shall be held within sixty days of the date of the order granting a hearing.

(h) Presence of Movant–Record of Hearing–Continuance of Hearing–Burden of Proof. At any hearing ordered by the court the movant need not be present. The court may order that testimony of the movant shall be received by deposition. The hearing shall be on the record. The court may continue the hearing upon a showing of good cause. The movant has the burden of proving his grounds for relief by a preponderance of the evidence.

(i) Findings and Conclusions, Issued, When–Judgment. The court shall issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held, within thirty days of the submission of the case. If the court finds that the judgment was rendered without jurisdiction, that the sentence imposed was illegal, or that there was a denial or infringement of the rights given movant by the constitution of Missouri or the constitution of the United States as to render the judgment subject to collateral attack, the court shall vacate and set aside the judgment and shall discharge the movant or resentence him or order a new trial or correct the judgment and sentence as appropriate.

(j) Appeal–Standard of Appellate Review. An order sustaining or overruling a motion filed under the provisions of this Rule shall be deemed a final judgment for purposes of

appeal by the movant or the state. If the court finds that a movant allowed an appeal is an indigent person, it shall authorize an appeal in forma pauperis and furnish without cost a record of all proceedings for appellate review. When the appeal is taken, the circuit court shall order the official court reporter to promptly prepare the transcript necessary for appellate review without requiring a letter from the movant's counsel ordering same. If the sentencing court finds against the movant on the issue of indigency and the movant so requests, the court shall certify and transmit to the appellate court a transcript and legal file of the evidence solely on the issue of indigency so as to permit review of that issue by the appellate court. Appellate review of the trial court's action on the motion filed under this rule 29.15 shall be limited to a determination of whether the findings and conclusion of the trial court are clearly erroneous.

(k) Successive Motions. The circuit court shall not entertain successive motions.

(l) Effect of Motion on Pending Appeal – Consolidation of Appeals. If a motion is filed under this Rule 29.15 and an appeal is pending from the judgment of conviction that is the subject to the motion, the appeal shall be suspended until final determination of the issues raised by the motion. Appellate shall give notice to the court where the appeals is pending of the entry of judgment on the motion filed under this Rule 29.15 within ten days of the entry of the judgment. If an appeal is filed from the judgment sustaining or overruling a motion filed under the provisions of this Rule 29.15, the appeal from the judgment of conviction shall be consolidated with the appeal from the judgment on the motion. The record on appeal shall consist of the transcript and legal file from both the judgment of conviction and the judgment ton the motion. If a claim of ineffective assistance of counsel was presented in the motion, the attorney representing movant on the motion filed pursuant to this Rule

29.15 shall be the attorney on appeal for the consolidated case.

(m) Schedule. This Rule 29.15 shall apply to all proceedings wherein sentence is pronounced on or after January 1, 1988. If sentence is pronounced prior to January 1, 1988, and no prior motion has been filed pursuant to Rule 27.26, a motion under this Rule 29.15 may be filed on or before June 30, 1988. Failure to file a motion on or before June 30, 1988 shall constitute a complete waiver of the right to proceed under this Rule 29.15. If a sentence is pronounced prior to January 1, 1988, and a prior motion under Rule 27.26 is pending, post-conviction relief shall continue to be governed by the provisions of Rule 27.26 in effect on the date the motion was filed.

(Added Feb. 11, 1987, effective Jan. 1, 1988. Amended May 23, 1987, effective Jan. 1, 1988).

CLAIMS FROM RESPONDENT WHITE'S PRO SE RULE 29.15 MOTION

MOVANTS CONVICTION WAS OBTAINED IN VIOLATION OF THE FOURTH, FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND IN VIOLATION OF ARTICLES 10, 17 AND 18A OF THE MISSOURI CONSTITUTION, WHEN MOVANTS COUNSEL RENDERED INEFFECTIVE ASSISTANCE. COUNSEL WAS INEFFECTIVE FOR AT LEAST BUT NOT LIMITED TO THE FOLLOWING:

A. When counsel, in apparent effort to circumvent the orderly process of post conviction proceedings required and compelled movant to take the witness stand, for the purpose of compelling movant, without the aid of conflict free counsel, to condone, verify and/or sanction trial counsels trial strategy, i.e. what witnesses to call, what questions to ask and what evidence to marshall in general. This improper conduct of counsel impermissibly invaded the province of the attorney client relationship and exposed movant to cross-examination by the state. Said conduct was prejudicial to movant.

B. When counsel, waived the right to exclude all witnesses from the courtroom by making an exception, and allowing the victims mother and brother to remain in the courtroom prior to their expected testimony. Failure to exclude these witnesses allowed them to hear the entire trial, resulting in them altering their expected favorable testimony. (Tr. 3)

C. When counsel failed and refused to make the proper objections to the trial court conducting voir dire that was not recorded by the court reported or by any other lawful means. Thus movant was denied a full and complete transcript from which to perfect his appeal. (it should be noted that the initial voir dire was conducted by a Judge who was not a sitting judge

in this case. This initial voir direing was not only conducted " off the record " but was also conducted outside the presence of movant and/or counsel.). (T.r. 18)

D. When counsel failed and refused to make the proper objection to the States improper voir dire. The States voir dire was improper because the State did not limit the questioning to general circumstances designed to aid in the selection of neutral jurors. The States questioning was in fact preceded by the State presenting it's versions of the specific facts of this case. This amounted to the State seeking to predispose the jurors, and the way they would vote on the specific facts of this case.(T.r. 81) (T.r. 172)

E. When counsel failed and refused to make the proper objection to the courts improper statement to the voir dire panels that movant could be pardoned by the Governor for a conviction of First Degree Murder. These statements by the court effectively advised the voir dire panels that a sentence of death imposed by the jurors was not final, thus undermining the reliability of the juries verdict by removing the responsibility of the burden for the imposition of death. (T.r. 207)

F. When counsel failed and refused to conduct any meaningful voir dire examination, and failed and refused to make any objections when same was obviously proper to the states request for jurors being struck for cause, when no legal cause existed for said strikes. Counsel also failed to make any effort to rehabilitate potential jurors who spoke ambiguously as to their position concerning the imposition of the death penalty. (210 . . .)

G. When counsel failed and refused to properly object to the court reading instructions to the jury, that only become proper at the close of all evidence, during voir dire.

H. When counsel failed and refused to make the proper objection when the States attorney, during voir dire examination impermissibly advised the jury as to what, in the

States attorneys opinion constituted First Degree Murder. The States attorneys personal opinions and legal theories were impermissibly placed before the jury, thus invading the province of the jury and the court. (362)

I. When counsel improperly agreed to the States request to have jurors struck for caused based upon their personal opposition to the death sentence. That is, counsel agreed to jurors being stricken for cause despite the fact that these potential jurors had in no way indicated that they were unable , or unwilling to put aside their personal opinions and follow the courts instructions. (T.r. 365)

J. When counsel without movants consent or knowledge agreed to allow the trial court to instruct the jury that in a previous case another defense attorney had in fact lied and misled a previous jury. (T.r. 442)

K. When counsel failed to properly object to the courts voir dire examination, on the grounds that said questions misrepresented the law, i.e. the court asked potential jurors if the jurors" . . . sentence him to death . . . ". This was not a proper question in that it did not elicit whether or not the juror was capable of considering the entire range of punishment allowed by law.

L. When counsel improperly agreed with the state to allow the court to excuse juror Hughes for cause due to illness. (T.R. 501) Thereafter defense counsel for no known or logical reason wastes one of movants peremptory strikes to remove this already removed juror (T.r. 501).

M. When counsel failed to properly object to the State advising the jury during opening arguments that the evidence would show that movant was involved in an ongoing and existing conspiracy. This statement by the State was improper in that the state never offered any evidence to support this claim, and counsel should have reasonably known that the State would not be forthcoming with such evidence, as no such

evidence had been disclosed during pre trial discovery.

N. When counsel failed to question witnesses Black and Kinney in such a manner as to make the jury aware of the fact that these witnesses had made prior inconsistent statements. Counsel failed to impeach these witnesses with their prior inconsistent statements and further failed to offer these inconsistent statements as substantive evidence for the juries consideration. The aforstated was done despite counsels knowledge of the inconsistent statements and to the movants prejudice.

O. When counsel failed and refused to conduct reasonable pre-trial discovery, including but not limited to interviewing and deposing States witnesses. Counsel conducted no pre trial interviews and took no depositions. Had counsel conducted reasonable discovery counsel would have been in a position to successfully challenges the credibility of the States key witnesses by impeachment with inconsistent statements and rebuttal.

P. When counsel failed to file a motion to suppress the in court identification of movant by witness carol Kinney, on the grounds that said identification was the product of impermissibly suggestive conduct by the State, and mistaken identity on the part of the witness.

Q. When counsel failed to properly impeach the testimony of Carol Kinney by offering the testimony of Ben Kinney. Counsel knew or reasonably should have known that Ben Kinney, if called would have testified that Carol Kinney had made statements prior to trial to Ben Kinney that were inconsistent with her trial testimony and in court identification of movant.

R. When counsel failed to object to the State improperly bolstering the testimony of the States witnesses concerning the in court identification of movant by presenting to the jury video tapes of the line up procedure employed

involving movant. The video tapes were shown to the jury in an effort to bolster the incourt identification prior to the witnesses credibility being placed in question.

S. When counsel failed and refused to honor movants request and present expert testimony to the effect that drug use had on the mind and on the minds ability to correctly receive, process and intrepit information. Had counsel presented said expert testimony the jury could have reasonably found that the incourt identification of movant was not reliable due to the witnesses admitted drug consumption and influence at the cogent times.

T. When counsel failed to call to the courts attention and failed to take the necessary steps to preclude the jury, witnesses and the general public from being able to overhear each and every bench conference. This includes conferences that were off the record and those recorded. Allowing the jury to overhear the bench conferences without question prejudiced movant, and defense counsel knew or reasonably should have known that all bench conferences were audible throughout the courtroom.

U. When counsel engaged in unethical and improper conversations with the victims immediate family members. Said conversations involved discussions by defense counsel concerning the merits of movants defense and movants trial strategy, all to the prejudice of movant. Defense counsel knowingly violated the attorney -client relationship by divulging the aforestated, and this conduct is more grievous when defense counsel knew or reasonably should have known that the victims family members were relaying all information to the States attorney.

V. When counsel failed to object to the State withholding and suppressing evidence favorable to movant, when said information became apparent during trial. The State had shown witness Kinney and Black a photograph of movant

prior to these witnesses making an identification of movant, and the witnesses did not recognize movants photograph as being one of the perpetrators. This was valuable impeachment evidence that was suppress and withhold by the State.

W. When counsel failed and refused to offer the testimony of Charlie Ross and Joyce Williams on movants behalf. Had these witnesses been called they would have provided testimony that impeached the States witness Ernest Black and provided movant with an alibi, respectively.

X. When counsel preceded to trial knowing there existed a conflict of interest between movant and other clients represented by Mr. Duncan. In that Mr. Duncan was unable to devote his full time and attention to movants trial due to proceedings being conducted in other forums at the same time as movants trial, thus resulting in Mr. Duncan leaving movants murder trial while court was in session to attend other proceedings. It is absurd for a defense counsel to pretend to represent a client in a capital case on a piece meal basis.

Y. When counsel failed to object to the trial courts failure to instruct the jury in a clear and understandable manner. The trial court instruction to the jury are so confusing and misleading that a juror could have misunderstood the instructions to require that a mitigating circumstance be unanimously found before it could be considered by a single juror as evidence in mitigations. See: MILLS VS. MARYLAND, _____ S.Ct _____1988.

Z. When counsel failed to object to the trial court trying and sentencing movant under the current Missouri death penalty laws on the grounds that said statutes are unconstitutional for at least but not limited to the fact that said statutes allow the prosecuting attorney totally unbridled discretion in who will be death eligible.

AA. When counsel failed and refused to request that the court instruct the jury on the lesser included offenses of

second degree murder and manslaughter when said instructions were supported by the evidence and when failure to so instruct denied movant equal protection under existing Missouri law.

BB. When counsel failed to request the court to instruct the jury that the testimony of a drug addict should be taken with caution and care.

CC. When counsel improperly questioned the States witness Black, in such a manner as to elicit very damaging and prejudicial information not theretofore presented, i.e. the in court identification of movant as being on of the perpetrators.

PORTION OF TRIAL OF RESPONDENT (Feb. 6, 1989)

CROSS-EXAMINATION by Mr. O'Connor:

Q: Deonta did pick out A.J.'s picture, though, right?

A.: He recognized his picture. Yes, sir.

Q: And you knew the boys had witnessed the crime? Correct?

A: Yes, sir.

Q: You had talked to them?

A: Yes, sir.

Q: And they gave you some pretty detailed information about he suspects, did they not?

A: Yes, sir.

Q: And then you showed them some photographs?

A: Yes, sir.

Q: After that?

A: That's correct.

Q: Are you telling us the purpose of showing the photograph was just to see if they knew people? Just, "Do you know these guys?"

A: No, sir. The purpose of showing the photographs was to identify any possible suspects.

Q: And then Deonta picked this pisture out, isn't that true?

A: Not as a suspect sir.

Opposition Brief Unavailable for Filming at this Time

(5)

No. 05-686

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD P. ROPER,
Superintendent, Potosi Correctional Center,
Petitioner,

v.

LEAMON WHITE,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY BRIEF

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No. 06-686

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD P. ROPER,
Petitioner,
v.
LEAMON WHITE,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY BRIEF

The petition demonstrates why this Court should review this case. By holding White's trial counsel ineffective for not presenting inadmissible evidence, by deeming counsel's investigation inadequate without specifying what new information of assistance to the defense counsel would have acquired through a broader investigation, and by placing on petitioner the burden of proving the reasonableness of counsel's decision not to call two witnesses (one of whom could only have given redundant testimony), the Eighth Circuit contravened *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Strickland v. Washington*, 666 U.S. 668 (1984) – and created a circuit split. By deeming inadequate the Supreme Court of Missouri's abandonment remedy *allowing* consideration of some of White's postconviction claims, the Eighth Circuit turned on its head the independent and adequate state grounds doctrine as set forth in *Ford v. Georgia*, 498 U.S. 411 (1991). Contrary to the Eighth Circuit, that remedy was mandated by

settled Missouri precedent. White has no cogent answer to these arguments.

I. Ineffective Assistance of Counsel

1. According to White, "no serious question exists about the admissibility of Dorothy Merrell's testimony under Missouri law." Resp. Brief 12. White maintains that evidence of a third-party's guilt is inadmissible "only when it is 'conjectural' or 'disconnected and remote.'" Resp. Brief 13. Wrong: In Missouri, such evidence is inadmissible unless its proponent can establish that it is "of the kind that directly connects the other person with the *corpus delicti* and tends clearly to point to someone other than the accused as the guilty person." *State v. Rousan*, 961 S.W.2d 831, 848 (Mo. 1998) (en banc). That evidentiary rule has been Missouri's since at least 1968, *State v. Stokes*, 638 S.W.2d 715, 723 (Mo. 1982) (en banc), and, contrary to White's assertion, Resp. Brief 11, is materially identical to the South Carolina rule before this Court.[1] Under that rule, Merrell's testimony would have been inadmissible as a matter of law. As the petition makes clear, Merrell was not an eyewitness and could not even provide a motive or opportunity for the third party, A.J., to have killed Wright. Pet. 9. In fact, Merrell's statement that A.J. did not kill her *because* she did not have drugs created an inference that A.J. didn't kill Wright, who didn't have drugs, either. Pet. 9. That her testimony would have placed A.J. with one of the assailants at a house

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[1]The issue in *Holmes* is: "Whether South Carolina's rule governing the admissibility of third-party guilt evidence violates a criminal defendant's constitutional right to present a complete defense grounded in the Due Process, Confrontation, and Compulsory Process Clauses." Pet. for Cert., 2005 WL 770655, at 2. Part of that rule is that "before such [evidence] can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party." *State v. Holmes*, 605 S.E.2d 19, 23 (S.C. 2004).

where the murder did not take place, that A.J. arranged to meet Wright at his house to buy drugs from him, and that he left Merrell's house to buy drugs from Wright does not exculpate White. As the Supreme Court of Missouri observed, White's argument "suggests only that one of the three assailants was not movant. How that exculpates [him] is not explained." App. 240. The Supreme Court of Missouri has upheld decisions excluding evidence much more probative than Merrell's. *See, e.g.*, *Stokes*, 638 S.W.2d at 716-17, 723 (affirming exclusion of evidence in capital murder trial that victim's boyfriend "had an opportunity to commit the crime; that his fingerprints were found in the apartment; that approximately two weeks prior to her death the victim had reported his assault upon her to the police; and[] that the police, after the instant crime, had first arrested and later released [him].").

2. White's contention that this case does not present a compelling reason for review is wrong. Whether counsel is ineffective for not trying to present inadmissible evidence and whether the state has the burden of producing reasonable grounds why trial counsel might not have decided to call certain witnesses are both important questions; and the Eighth Circuit's answers are contrary to *Wiggins* and *Strickland*. Pet. 6-16. This case also presents a conflict within the federal circuit courts of appeal. *See* U.S. Sup.Ct.R. 10(a). Unlike the Fourth, Seventh, Ninth, Eleventh, and D.C. Circuit Courts of Appeal, the Eighth Circuit granted relief on an ineffective investigation claim without specifying, and without requiring any specification of, what additional information counsel would have acquired through a broader investigation. This Court has never recognized such an abstract claim of an inadequate investigation as warranting a finding of ineffective assistance under the Sixth and Fourteenth Amendments.

3. In two significant respects, White has misrepresented the record. His claim that he "never argued and no court in this case has held that trial counsel had a duty to attend" the trial of co-defendant Buckner, Resp. Brief 12 n.5, is false. The district

court, in a section of its order entitled, "Issues Justifying Issuance of the Writ," noted that White's trial counsel did not attend the Buckner trial. App. 24. The Eighth Circuit then stated: "The district court concluded that counsel failed to conduct an adequate investigation because [trial counsel] . . . did not [among other things] attend Buckner's trial[.]" App. 4. Also false is White's claim that trial counsel must not have had a copy of the transcript of the Buckner trial, because there was no evidence he did and all inferences indicated he didn't. Resp. Brief 12 n.5. It was White's burden to plead and prove that counsel did *not* have these transcripts. *See Kimmelman v. Morrison*, 477 U.S. 365, 381 (1986); Habeas Rule 2(c)(2). In the absence of evidence to the contrary, it is presumed that trial counsel had the transcript. *See Strickland*, 466 U.S. at 680; *Chandler v. United States*, 218 F.3d 1305, 1314 n.15 (11th Cir. 2000) (en banc). "On collateral attack, a silent record supports the judgment; the state receives the benefit of . . . all reasonable inferences." *Higgason v. Clark*, 984 F.2d 203, 208 (7th Cir. 1993) (Easterbrook, J.).[2]

4. Because petitioner didn't argue in the district court the inadmissibility of Dorothy Merrell's testimony, White, citing *Hormel v. Helvering*, 312 U.S. 552, 556 (1941), contends that petitioner has waived the argument. Resp. Brief 11-12. Not so; Habeas Rule 5(b), though requiring petitioner to address White's factual allegations and certain affirmative defenses, did not require petitioner to prove the inadmissibility of Merrell's testimony. It was *White's* burden to prove the testimony would have been admissible. *See Kimmelman*, 477 U.S. at 381 ("In order to establish ineffective representation, the defendant must prove both incompetence and prejudice."). When he didn't do

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[2]White makes other misstatements. He says, for instance, that Carol Kinney identified him as the killer "only after police showed [Carol Kinney] a photograph of [him.]" Resp. Brief 1. But the district court found "no evidence that [White's] photograph was ever shown to Kinney prior to her picking him out of the videotaped lineup." App. 12-13.

so, petitioner was entitled to point it out on appeal. *See United States v. Irizarry*, 673 F.2d 554, 557 (1st Cir. 1982). At most, White's argument establishes forfeiture (an oversight this Court can forgive), not waiver, for petitioner never intentionally relinquished his right to contest the admissibility of Merrell's testimony. *See Kontrick v. Ryan*, 540 U.S. 443, 458 n.13 (2004); *United States v. Cook*, 406 F.3d 485, 487 (7th Cir. 2005) (Posner, J.). *Hormel* requires arguments to be raised in the district court to prevent "litigants [from being] surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." 312 U.S. at 556-57. The question here is a question of law, however (which the Eighth Circuit had the discretion to consider, *see Universal Title Ins. Co. v. United States*, 942 F.2d 1311, 1314-15 (8th Cir. 1991)). It would be a manifest injustice to release a cold-blooded murderer because of counsel's non-submission of inadmissible evidence, and so *Hormel* itself authorizes consideration of petitioner's argument. 477 U.S. at 557.

5. White implies that because the trial court allowed his trial counsel to attempt to show that A.J. committed the crime, petitioner is estopped from arguing the inadmissibility of Merrell's testimony. Resp. Brief 11-12. Under *Strickland*, however, the determination of prejudice does not turn on "the possibility of arbitrariness, whimsy, caprice, 'nullification,' and the like." 466 U.S. at 695. The proper assumption, then, is that if trial counsel had offered Merrell's testimony, the prosecutor would have objected that the evidence did not directly implicate A.J. and exculpate White, and the trial court would have sustained the objection. Even if White might be correct (i.e., the prosecutor would not have objected or the trial court would have overruled the objection), such a windfall is not cognizable prejudice. *See Lockhart v. Fretwell*, 506 U.S. 364, 370, 372 (1993) ("Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him.").

II. Independent & Adequate State Grounds Doctrine

1. White argues that the abandonment remedy was inadequate because it was a "hollow gesture," the first amended motion having been "thrown together in just 14 days," and White's second postconviction counsel having said "that he did not have enough time to file a timely amended motion after he entered his appearance." Resp. Brief 6-7. The question, though, is not whether the abandonment remedy was adequate, but whether the *procedural bar* (the time limitations of Rule 29.15(e) and (f)) was adequate. It was. The Eighth Circuit never held or implied otherwise, and this Court has never "held that a state procedural ground is inadequate simply because the state court possessed but did not exercise the discretion to excuse the procedural default." Daniel J. Meltzer, *State Court Forfeitures of Federal Rights*, 99 HARV. L. REV. 1128, 1141 (1986). White is also wrong on the merits. His second postconviction counsel did say that he was unable to timely file the first amended motion. But (1) the Supreme Court of Missouri cured the motion's untimeliness by deeming it timely; (2) neither White nor his second postconviction counsel complained at his abandonment hearing of lack of time to raise all grounds for relief in the first amended motion; and (3) White was (and is) estopped from complaining about the inadequacy of the first amended motion, for he executed a verification stating that all grounds for relief were included in that motion. Pet. 24. It must be remembered that White's initial Rule 29.15 motion raised twenty-nine claims for relief, Pet. 2, and White never told the lower court which claims he would have raised in a third amended motion that weren't raised in his first amended motion. In any event, White's complaint about the substance of the first amended motion is just a claim of ineffective assistance of postconviction counsel, which Missouri has never recognized. *State v. Owsley*, 959 S.W.2d 789, 799 (Mo. 1997) (en banc).

2. As discussed in the petition, it is an analytic confusion, and a violation of *Ford v. Georgia*, 498 U.S. 411 (1991), to weigh the adequacy of a procedural default by reference to the adequacy of the retroactive application of a judge-created exception to that default. Pet. 18-19. In response, White claims that the abandonment remedy "was as much part of Rule 29.15 as the timing and verification requirements themselves" and that "at the time [his] case came before the Missouri Supreme Court, abandonment by postconviction counsel was a well-established excuse for procedural default." Resp. Brief 18 n.6. But whether a procedural rule is firmly established and regularly followed and thus adequate is determined by reference to state jurisprudence at the time of the default. *Ford*, 498 U.S. at 424. White defaulted his postconviction claims in the state trial court, not in the Supreme Court of Missouri. Only after that default did the abandonment doctrine come into existence. So at the relevant time, the abandonment doctrine was not a part of Rule 29.15 at all.

3. Petitioner's argument is thus not aimed at the adequacy of the Eighth Circuit's application of the independent and adequate state grounds doctrine. Resp. Brief 15. That doctrine addresses the adequacy of the procedural rule whose application results in the default of a claim. The abandonment remedy afforded White ("adequate" or not) *did not bar any claims*, but rather excused their default. The Eighth Circuit's recitation of boilerplate procedural-default law, Resp. Brief 16, does not extinguish the conceptual confusion that is the *sine qua non* of the Eighth Circuit's inadequacy holding. *Cf. Holland v. Jackson*, 542 U.S. 649, 654-55 (2004).

4. White reiterates his contention, which the Eighth Circuit accepted, that before his first appeal to the Supreme Court of Missouri, there was only one remedy for abandonment by postconviction counsel: appointment of new counsel and additional time to file another amended motion. Resp. Brief 7, 17. But White's authorities for this contention – *Sanders v. State*, 807 S.W.2d 493 (Mo. 1991) (en banc), *Luleff v. State*,

807 S.W.2d 495 (Mo. 1991) (en banc), and *State v. Bradley*, 811 S.W.2d 379 (Mo. 1991) (per curiam) – do not mandate a single abandonment remedy. *Sanders* itself ordered the very remedy White received: treatment of an untimely postconviction motion as timely. Pet. 22. Two years before deciding White's case, moreover, the Supreme Court of Missouri rejected and called "odd" the abandonment remedy White later sought. *State v. Ervin*, 835 S.W.2d 905, 928 (Mo. 1992) (en banc). In a case factually indistinguishable from White's and on the very day the Supreme Court of Missouri promulgated the abandonment doctrine, that Court ratified the remedy White received. *Pollard v. State*, 807 S.W.2d 498, 502 (Mo. 1991) (en banc). White addresses neither *Pollard* nor *Ervin*.

White's reliance on *Bradley* is misplaced. *Bradley* involved postconviction counsel who never filed an amended motion during the eleven months between the filing of the initial *pro se* motion and the trial court's summary dismissal of the case. *Id.* at 384. The record was "utterly silent as to any action taken by appointed counsel after such counsel [was] afforded an opportunity to amend the motion." *Id.* at 383.[3] In short, there was a complete absence of performance by postconviction counsel, that is, *Luleff*, not *Sanders*, abandonment. So the appropriate remedy, and the remedy discussed in the pass[illegible] White quotes, Resp. Brief 7 n.2, was appointment of new

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[3]In *Bradley*, on the s[illegible]day that the defendant filed his *pro se* postconviction motion, postc[illegible]ction counsel filed one, too. It did not purport to be an amended motion and, as the Supreme Court of Missouri held, "[o]n its face" the motion was "clearly a nullity," because it was both unsigned and unverified. *Id.* at 382. The verification requirement was a jurisdictional prerequisite. *Id.* at 383. *Bradley* exposes as false the dilemma the Eighth Circuit thought White faced – "to lose all of his claims in an untimely motion or to sign an improper verification and hope that the motion would at least be timely." App. 117. Had White declined to execute the false verification and had postconviction counsel submitted an unverified motion, White would have gotten the *Bradley* remedy, the remedy he sought.